

IN THE STATE OF MICHIGAN

IN THE SUPREME COURT

\*\*\*\*\*

Appeal from the Court of Appeals

Panel: Whitbeck, P.J., and Smolenski and Cooper, JJ.

PAUL DRESSEL and THERESA  
DRESSEL,

Plaintiffs/Appellees,

vs.

AMERIBANK,

Defendant/Appellant.

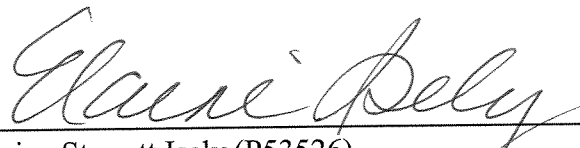
---

Supreme Court Docket No. 119959

Court of Appeals Docket No. 222447

Kent County Circuit Court Case  
No. 98-013017-CP

**AMICUS CURIAE BRIEF ON BEHALF OF THE  
MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.**



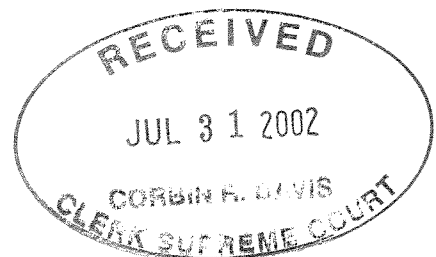
Elaine Sterrett Isely (P53526)

Attorney for *Amicus Curiae*, Michigan Migrant  
Legal Assistance Project, Inc.

648 Monroe N.W., Suite 318

Grand Rapids, MI 49503

(616) 454-5055



IN THE STATE OF MICHIGAN

IN THE SUPREME COURT

\*\*\*\*\*

Appeal from the Court of Appeals

Panel: Whitbeck, P.J., and Smolenski and Cooper, JJ.

PAUL DRESSEL and THERESA  
DRESSEL,

Plaintiffs/Appellees,

vs.

AMERIBANK,

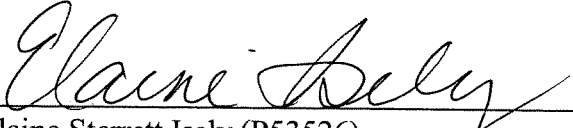
Defendant/Appellant.

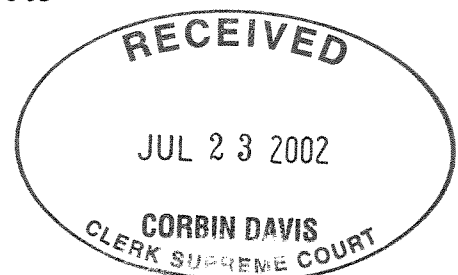
Supreme Court Docket No. 119959

Court of Appeals Docket No. 222447

Kent County Circuit Court Case  
No. 98-013017-CP

**AMICUS CURIAE BRIEF ON BEHALF OF THE  
MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.**

  
Elaine Sterrett Isely (P53526)  
Attorney for *Amicus Curiae*, Michigan Migrant  
Legal Assistance Project, Inc.  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055



## **I. TABLE OF CONTENTS**

<b>I.</b>	<b>TABLE OF CONTENTS</b>	<b>ii</b>
<b>II.</b>	<b>INDEX OF AUTHORITIES</b>	<b>iv</b>
<b>III.</b>	<b>STATEMENT OF JURISDICTION</b>	<b>1</b>
<b>IV.</b>	<b>STATEMENT OF QUESTIONS PRESENTED</b>	<b>2</b>
<b>V.</b>	<b>STATEMENT OF FACTS</b>	<b>4</b>
<b>VI.</b>	<b>STANDARD OF REVIEW</b>	<b>6</b>
<b>VII.</b>	<b>ARGUMENTS</b>	<b>7</b>
<b>A.</b>	<b>DEFENDANT/APPELLANT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW WHEN ITS NON-ATTORNEY EMPLOYEES PREPARED LEGAL DOCUMENTS FOR THE BENEFIT OF PLAINTIFFS/APPELLANTS.</b>	<b>7</b>
1.	The preparation of mortgage and other real estate documents and contracts comes under the practice of law.	7
2.	A non-attorney bank employee cannot prepare mortgage and other real estate documents and contracts for a borrower.	11
3.	The preparation of mortgage and other real estate documents and contracts for no charge is the unauthorized practice of law.	13
<b>B.</b>	<b>THE PRACTICE OF LAW BY NON-ATTORNEYS ENDANGERS THE CITIZENRY OF MICHIGAN AND THE INTEGRITY OF THE LEGAL SYSTEM.</b>	<b>14</b>
<b>C.</b>	<b>DEFENDANT/APPELLANT VIOLATED THE MICHIGAN CONSUMER PROTECTION ACT WHEN IT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.</b>	<b>17</b>
1.	Defendant/Appellant is exempt not from prosecution of a claim by a consumer under the Michigan Consumer Protection Act.	18

2. Defendant/Appellant's activities are illegal under the Savings Bank Act and the exception to the exemption from prosecution by a consumer under the Michigan Consumer Protection Act applies. . . 19

**VIII. RELIEF REQUESTED** .....



## II. INDEX OF AUTHORITIES

### Case Law

<u>Acosta et al v Alfredo Rodriguez et al,</u> Ottawa Cty Cir Ct, Case No. 99-33894-NM .....	4, 16
<u>Aguilar et al v Alfredo Rodriguez et al,</u> Ottawa Cty Cir Ct, Case No. 00-37999-NM .....	4, 16
<u>In re Arthur</u> , 15 Bankr 541 (Bankr ED Pa 1981) .....	15
<u>Ayres v Hadaway</u> , 303 Mich 589; 6 NW2d 905 (1942) .....	12, 14
<u>Baron et al v Futura Casa LLC et al,</u> US Dist Ct (WD Mich), Docket No. 1:01 CV 262 .....	4, 16
<u>Boykins v Hopkins</u> , 162 SE 796; 174 Ga 511 (1932) .....	8
<u>In the Matter of Bright</u> , 171 BR 799 (Bankr ED Mich 1994) .....	9, 10, 15
<u>Detroit Bar Assoc v Union Guardian Trust Co,</u> 282 Mich 216; 276 NW 365 (1937) .....	9, 11, 12
<u>Dressel v Ameribank</u> , 247 Mich App 133, 144; 635 NW2d 328 (2001) .....	19, 20
<u>In re Duncan</u> , 65 SE 210; 83 SC 186 (1909) .....	8
<u>Eley v Miller</u> , 34 NE 836; 7 Ind App 529 (1893) .....	8
<u>Ferris v Snively</u> , 19 P2d 942; 172 Wash 167 (1933) .....	8, 9
<u>Grand Rapids Bar Assoc v Denkema</u> , 290 Mich 56; 287 NW 377 (1939) .....	7, 8, 9
<u>Harvest Hill Apartments v Heil</u> , 63 <sup>rd</sup> District Court, Case No. R-99-0743-LT .....	12
<u>Ingham County Bar Assoc v Walter Neller Co,</u> 342 Mich 214; 69 NW2d 713 (1955) .....	9
<u>In re Matthews</u> , 62 P2d 578; 57 Idaho 75 (1936) .....	8, 9

**Case Law (cont.)**

<u>Michigan State Bar v Alfredo Rodriguez,</u> <u>Ottawa Cty Cir Ct, Case No 99-33794-CZ</u> .....	4
<u>Ohlman v Perfectype Inc, Kent County Circuit Court No. 92-76172-PS</u> .....	12
<u>Opinion of the Justices, 194 NE 313; 289 Mass 607 (1935)</u> .....	8
<u>Oregon State Bar v Security Escrows, Inc,</u> <u>377 P2d 334; 233 Or 80 (1962)</u> .....	14
<u>Paul v Stanley, 12 P2d 401; 168 Wash 371 (1932)</u> .....	8, 9
<u>People v Alfani, 125 NE 671; 227 NY 334 (1919)</u> .....	8, 9
<u>RJ Edwards, Inc v RL Hert, 504 P2d 407 (Okl 1972)</u> .....	8
<u>Shapiro v Steinberg, 176 Mich App 683; 440 NW2d 9 (1989)</u> .....	10
<u>Smith v Globe Life Ins Co, 460 Mich 446; 597 NW2d 28 (1999)</u> .....	18, 19
<u>State v Schumacher, 519 P2d 1116; 214 Kan. 1 (1974)</u> .....	8
<u>State Bar of Michigan v Cramer,</u> <u>399 Mich 116; 249 NW2d 1 (1976)</u> .....	7, 8, 10, 14, 15
<u>State Bar of Michigan v Kupris, 366 Mich 688; 116 NW2d 341 (1962)</u> .....	9
<u>State, ex rel Mackintosh v Rossman, 101 P 357; 53 Wash 1 (1909)</u> .....	14
<u>State, ex rel Wright v Barlow, 268 NW 95; 131 Neb 294 (1936)</u> .....	8, 9
<u>Washington State Bar Assoc v Great Western Union Federal Savings &amp; Loan Assoc,</u> <u>586 P2d 870; Wash2d 48 (1978)</u> .....	8
<u>Zine v Chrysler Corp, 236 Mich App 261; 600 NW2d 384 (1999)</u> .....	17

**Statutes and Court Rules**

<u>15 USC 1601, et seq</u> .....	20
<u>MCL 445.901, et seq.</u> .....	17, 20

**Statutes and Court Rules (cont.)**

MCL 445.903 .....	17
MCL 445.904 .....	18, 19
MCL 445.911 .....	18, 19
MCL 445.1851, <i>et seq.</i> .....	20
MCL 445.1862 .....	20
MCL 450.681 .....	12
MCL 487.3101, <i>et seq.</i> .....	18, 19
MCL 487.3401 .....	19
MCL 487.3418 .....	19
MCL 487.3430 .....	20
MCL 600.901 .....	11
MCL 600.901, <i>et seq.</i> .....	11
MCL 600.916 .....	11
MCR 7.301 .....	1
MCR 7.302 .....	1
MCR 7.306 .....	1
MCR 7.309 .....	1
MCR 8.120 .....	11, 14
MCR 9.100, <i>et seq.</i> .....	15

**Rules of Professional Conduct**

MRPC 4.3 .....	15
MRPC 5.3 .....	15
MRPC 5.4 .....	13-14
MRPC 5.5 .....	12
MRPC 6.1 .....	13

**Articles and Miscellaneous Sources**

Aguis, Margaret Lucas. CLA, Legal Assistants Section of State Bar of Michigan. “Michigan Bar Journal: <u>Not Just for Lawyers</u> .” March 2001. Vol 80, No 3., at p 30 .....	16
Black’s Law Dictionary, 6 <sup>th</sup> Ed. (1990) .....	8
Byerley, Thomas K., Regulation Counsel of the State Bar of Michigan. “Unauthorized Practice of Law: <u>Focus on Professional Responsibility</u> .” May, 1999. <a href="http://www.michbar.org/opinions/ethics/Articles/may99.html">Http://www.michbar.org/opinions/ethics/Articles/may99.html</a> .....	4
Michigan Legal Assistance Network. “Farmworker Legal Services: <u>Current News/Noticias</u> .” No date. <a href="http://www.mlan.net/fwls/update_news/update.html">Http://www.mlan.net/fwls/update_news/update.html</a> . ....	16
Michigan Legal Assistance Network. <u>Free Legal Aid in Michigan</u> . No date. <a href="http://www.mlan.net/field.htm">Http://www.mlan.net/field.htm</a> . ....	13
National Consumer Law Center. “Immigrant Justice in the Consumer Marketplace: <u>Immigrant Consultant Fraud</u> .” 2001. <a href="http://www.consumerlaw.org/osi/miscellaneous/consultant_fraud.htm">Http://www.consumerlaw.org/osi/miscellaneous/consultant_fraud.htm</a> .....	4

### **III. STATEMENT OF JURISDICTION**

The Michigan Supreme Court may review decisions by the Court of Appeals, so long as application for leave to appeal is made by the complaining party within twenty-one (21) days after the filing of that Court's opinion. MCR 7.301(A)(2); MCR 7.302(C)(2)(b).

Defendant/Appellant, Ameribank, timely filed its Application for Leave to Appeal the Court of Appeal's August 3, 2001 opinion on August 24, 2001. This Court granted leave on April 23, 2002. Defendant/Appellant filed its Brief on Appeal on June 18, 2002, and the Michigan Migrant Legal Assistance Project, Inc. timely files its Motion, Statement of Interest and *Amicus Curiae* Brief on July 22, 2002. MCR 7.309(B)(1)(a); MCR 7.306(C); MCR 7.309(B)(2)(a). Accordingly, jurisdiction over this cause and over these parties is proper in this Court.

#### **IV. STATEMENT OF QUESTIONS PRESENTED**

**A. DID DEFENDANT/APPELLANT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW WHEN ITS NON-ATTORNEY EMPLOYEES PREPARED LEGAL DOCUMENTS FOR THE BENEFIT OF PLAINTIFFS/APPELLANTS?**

Appellant answers "no."

Appellee answers "yes."

*Amicus Curiae*, MMLAP answers "yes."

**1. Does the preparation of mortgage and other real estate documents and contracts come under the practice of law?**

Appellant answers "no."

Appellee answers "yes."

*Amicus Curiae*, MMLAP answers "yes."

**2. Can a non-attorney bank employee prepare mortgage and other real estate documents and contracts for a borrower?**

Appellant answers "yes."

Appellee answers "no."

*Amicus Curiae*, MMLAP answers "no."

**3. Is the preparation of mortgage and other real estate documents and contracts for no charge the unauthorized practice of law?**

Appellant answers "no."

Appellee answers "yes."

*Amicus Curiae*, MMLAP answers "yes."

**B. DOES THE PRACTICE OF LAW BY NON-ATTORNEYS ENDANGER THE CITIZENRY OF MICHIGAN AND THE INTEGRITY OF THE LEGAL SYSTEM?**

Appellant answers "no."

Appellee answers "yes."

*Amicus Curiae*, MMLAP answers "yes."

**C. DID DEFENDANT/APPELLANT VIOLATE THE MICHIGAN CONSUMER PROTECTION ACT WHEN IT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW?**

Appellant answers “no.”

Appellee answers “yes.”

*Amicus Curiae*, MMLAP answers “yes.”

**1. Is Defendant/Appellant exempt from prosecution of a claim by a consumer under the Michigan Consumer Protection Act?**

Appellant answers “yes.”

Appellee answers “no.”

*Amicus Curiae*, MMLAP answers “no.”

**2. Are Defendant/Appellant’s activities illegal under the Savings Bank Act, making the exception to the exemption from prosecution by a consumer under the Michigan Consumer Protection Act applicable?**

Appellant answers “no.”

Appellee answers “yes.”

*Amicus Curiae*, MMLAP answers “yes.”

## V. STATEMENT OF FACTS

*Amicus Curiae* adopts the Counter-Statement of Facts and Counter-Statement of Material Proceedings of Plaintiffs-Appellees for its Statement of Facts, herein.

Furthermore, consumer advocates are seeing increasing numbers of unqualified individuals, businesses and other associations who are attempting to assist consumers with such important matters as divorce, wills and trusts, the purchase of a home or vehicle, immigration, bankruptcy, and tax preparation.<sup>1</sup> Those particularly affected appear to be immigrants.<sup>2</sup> In most, if not all of these case, non-lawyers with no formal training or experience are preparing

---

<sup>1</sup> The State Bar of Michigan's Standing Committee on the Unauthorized Practice of Law actively monitors the activities of individuals and entities that engage in the unauthorized practice of law. Upon the recommendation of the Standing Committee and approval of the State Bar of Michigan's Board of Commissioners, the State Bar files litigation seeking permanent injunctions against individuals who violate the mandates of MCL 600.916.

Byerley, Thomas K. "Unauthorized Practice of Law: Focus on Professional Responsibility." May, 1999. [Http://www.michbar.org/opinions/ethics/Articles/may99.html](http://www.michbar.org/opinions/ethics/Articles/may99.html). The individuals against whom permanent injunctions have been obtained is lengthy. *Id.*, (Appendix, Exhibit 1); see also, Michigan State Bar v Alfredo Rodriguez, Ottawa Cty Cir Ct, Case No 99-33794-CZ. (Appendix, Exhibit 2.)

<sup>2</sup> MMLAP has brought several suits against individuals and businesses for their failure to draft proper legal documents and/or the fraudulent or defective preparation of legal documents for immigrants in such areas as home purchases and lending and immigration. See, Baron et al v Futura Casa LLC et al, US Dist Ct (WD Mich), Docket No. 1:01 CV 262 (Appendix, Exhibit 3), Acosta et al v Alfredo Rodriguez et al, Ottawa Cty Cir Ct, Case No. 99-33894-NM (Appendix, Exhibit 4), Aguilar et al v Alfredo Rodriguez et al, Ottawa Cty Cir Ct, Case No. 00-37999-NM (Appendix, Exhibit 5, attachments excluded). MMLAP is also currently investigating an additional lawsuit against Alfredo Rodriguez, and lawsuits against other individuals who have improperly completed tax forms on behalf of clients. See also, National Consumer Law Center. "Immigrant Justice in the Consumer Marketplace: Immigrant Consultant Fraud." 2001. [Http://www.consumerlaw.org/osi/miscellaneous/consultant\\_fraud.htm](http://www.consumerlaw.org/osi/miscellaneous/consultant_fraud.htm). (Appendix, Exhibit 6.)



documents for or on behalf of consumers. Sometimes nominal fees are charged, sometimes exorbitant fees are charges, and sometimes no fee at all is charged. The results are often the same—the consumer is denied the particular legal benefit that he is seeking. Some of these consumers, suffer potential severe financial and/or personal hardships as a result of these practices.

## **VI. STANDARD OF REVIEW**

*Amicus Curiae* adopts the statement of the appropriate Standard of Review, as set forth in the Appellee Brief of Paul and Theresa Dressel, for its statement of the Standard of Review, herein.

## **VII. ARGUMENTS**

### **A. DEFENDANT/APPELLANT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW WHEN ITS NON-ATTORNEY EMPLOYEES PREPARED LEGAL DOCUMENTS FOR THE BENEFIT OF PLAINTIFFS/APPELLANTS.**

It has always been difficult for our Courts to come up with an all-encompassing definition of what constitutes the practice of law.

We are still of the mind that any attempt to formulate a lasting, all-encompassing definition of “practice of law” is doomed to failure “for the reason that under our system of jurisprudence such practice must necessarily change with the everchanging business and social order.” No essential definition of the practice of law has been articulated and the descriptive definitions which have been agreed upon from time to time have only permitted disposition of specific questions. These definitions have been relatively helpful in counseling conduct but have provided no sure guide for the public’s protection.

State Bar of Michigan v Cramer, 399 Mich 116, 133; 249 NW2d 1 (1976), citing Grand Rapids Bar Assoc v Denkema, 290 Mich 56, 64; 287 NW 377 (1939). Before a court can determine whether particular individual, business or other entity is engaged in the unauthorized practice of law, the court must determine whether or not the activity complained of constitutes the practice of law. The Courts must look at each factual situation independently, and take into consideration the totality of the circumstances that exist in each case.

#### **1. The preparation of mortgage and other real estate documents and contracts comes under the practice of law.**

According to Black’s Law Dictionary, the practice of law is defined as follows:

The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent. It is not limited to appearing in court, or advising and performing services in the conduct of the various shapes of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and in

larger sense includes legal advice and counsel and **preparation of legal instruments by which legal rights and obligations are established.** A person engages in the “practice of law” by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate.

Black’s Law Dictionary, 6<sup>th</sup> Ed. (1990) at p1172, citing RJ Edwards, Inc v RL Hert, 504 P2d 407, 419 (Okl 1972), Washington State Bar Assoc v Great Western Union Federal Savings & Loan Assoc, 586 P2d 870; Wash2d 48 (1978), emphasis added, State v Schumacher, 519 P2d 1116, 1127; 214 Kan. 1 (1974).

Although Michigan courts have not specifically adopted this definition, they have noted that the practice of law is not limited to practice within the courtroom; it also includes the drafting of legal documents of all kinds, especially whereby a legal right is secured. Grand Rapids Bar Assoc, *supra.*, at 62 - 64, citing with approval, People v Alfani, 125 NE 671; 227 NY 334, 338 (1919), In re Duncan, 65 SE 210; 83 SC 186 (1909), Eley v Miller, 34 NE 836; 7 Ind App 529 (1893), Boykins v Hopkins, 162 SE 796; 174 Ga 511 (1932), Opinion of the Justices, 194 NE 313; 289 Mass 607, 613 (1935), In re Matthews, 62 P2d 578; 57 Idaho 75 (1936), Ferris v Snively, 19 P2d 942; 172 Wash 167 (1933), Paul v Stanley, 12 P2d 401; 168 Wash 371 (1932), State, ex rel Wright v Barlow, 268 NW 95; 131 Neb 294 (1936). In particular, they have determined—on a case by case basis—that the following activities fall within the practice of law:

- ▶ Activities regarding the probate of estates in which one is not personally interested. Grand Rapids Bar Assoc, *supra.*, at 69.
- ▶ Advertising professional guidance to clients, arranging personal conferences with clients to discuss divorce, preparing and filing completed documents at court, and personally advising clients as to proper or improper testimony. Cramer, *supra.*; see In the Matter of Bright, 171 BR 799, 802, fn2 (Bankr ED Mich 1994).

- ▶ The collection of raw data concerning finances, deciding where information should be placed on forms and in what format, adding language to standard forms that was not dictated by the debtor and transcribed verbatim, responding to questions regarding interpretation or definition of terms, showing reference books and specific pages in those books, providing basic information about local procedures and requirements, and consulting with a lawyer with whom one is not associated for answers to legal questions. Bright, supra.
- ▶ Drawing of wills. Detroit Bar Assoc v Union Guardian Trust Co, 282 Mich 216; 276 NW 365 (1937); see, Bright, supra.
- ▶ Preparing conveyances of real estate and personal property for consideration. Ferris, supra.; see Grand Rapids Bar Assoc, supra. at 66.
- ▶ Drawing and preparing legal instruments such as contracts for real estate, deeds, mortgages, bills of sale, and wills. Alfani, supra.; see Grand Rapids Bar Assoc, supra. at 66.
- ▶ Preparing deeds, mortgages, leases, agreements, contracts, bills of sale, chattel mortgages, wills, notes, conditional sales contracts, options, powers of attorney, community property agreements, liens, bonds, mortgage assignments, mortgage releases, chattel mortgage satisfactions, notices to vacate premises, notice to quit or pay rent, or any other documents requiring the use of knowledge of law in their preparation. Paul, supra., see Grand Rapids Bar Assoc, supra. at 66 - 67.
- ▶ Legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured. Matthews, supra., see Grand Rapids Bar Assoc, supra. at 67.

Non-attorneys may transcribe information on standard preprinted forms “as it is dictated or provided by another, **so long as the person preparing the document does not advise or counsel as to the legal effect and validity of the document.**” Grand Rapids Bar Assoc, supra., at 67, citing State, ex rel Wright, supra., emphasis added; see also, Bright, supra., at 802, fn2, citing Ingham County Bar Assoc v Walter Neller Co, 342 Mich 214; 69 NW2d 713, 717 (1955) and State Bar of Michigan v Kupris, 366 Mich 688; 116 NW2d 341 (1962). They may also advertise for sale and distribute do-it-yourself divorce kits containing forms and documents for

no-fault divorces. Cramer, supra.; see also Bright, supra., at 802, fn2. Similarly, an attorney licensed in another state may assist a Michigan attorney on a case by performing “work of a preparatory nature, such as research, investigation of details, assemblage of data, and similar activities.” Shapiro v Steinberg, 176 Mich App 683; 440 NW2d 9 (1989); see also Bright, supra., at 802, fn2.

Defendant/Appellant’s non-attorney employees prepared mortgage, note, and property transfer documents for Plaintiff/Appellees for \$400. Defendant/Appellant asserts that it’s employee simply filled in the blanks on forms previously reviewed and approved by counsel and made no modifications to standard provisions. However, Plaintiff/Appellee’s mortgage contained “non-uniform covenants,” such as the elimination of the right to cure default after 30 days except by paying of the entire mortgage. Such terms were obviously not dictated by Plaintiffs/Appellees, and there is no evidence that such terms were dictated by counsel of Defendant/Appellant at or near the time that the instrument was drafted. It is unlikely that these non-uniform terms were not discussed with Plaintiffs/Appellees, although the record on that fact is less clear. Defendant/Appellant’s non-attorney employees drafted legal instruments for consideration from the Plaintiffs/Appellees. These documents prescribed the parties legal rights and obligations, and conveyed legal interests. At least at some level, these documents were discussed and reviewed between the parties. This transaction falls squarely under the practice of law in Michigan.

2. **A non-attorney bank employee cannot prepare mortgage and other real estate documents and contracts for a borrower.**

Once we have determined that a practice is the “practice of law,” the question then becomes: “Who may legally engage in that practice?” Michigan law is quite clear on this issue. Members of the State Bar of Michigan have the exclusive right to designate themselves as attorneys, attorneys and counselors, or lawyers; “[n]o person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto.” MCL 600.901, emphasis added.<sup>3</sup> An attorney who is duly licensed and authorized to practice law in another state may practice in Michigan in a particular matter while temporarily in this state and engaged in that particular matter. MCL 600.916. A law students or recent graduate may staff public and nonprofit legal services and defender offices that provide free legal services to indigent persons. MCR 8.120(a). However, that law student or recent graduate must be under the supervision of a member of the State Bar. MCR 8.120(a). Finally, an individual may represent himself. See, Detroit Bar Assoc, supra., at 711.

Our State’s law also tell us who may **not** practice law.

It is unlawful for **any person to practice law**, or to engage in the law business, or in any manner whatsoever to lead others to believe that he is authorized to practice law or to engage in the law business, or in any manner whatsoever to represent or designate himself as an attorney and counselor, attorney at law, or lawyer, **unless the person so doing is regularly licensed and authorized to practice law in this state.**

MCL 600.916, emphasis added. An attorney may not assist another person who is not a member of the bar in an activity that constitutes the unauthorized practice of law. MRPC 5.5,

---

<sup>3</sup> The requirements of the Supreme Court in this regard are laid out generally at MCL 600.901, *et seq.*

Unauthorized Practice of Law. Even “a lawyer on the inactive list of the State Bar of Michigan has no right to engage in the practice of law.” Ayres v Hadaway, 303 Mich 589, 598; 6 NW2d 905 (1942).

A corporation certainly may not engage in the practice of law or render or furnish legal services for any person other than itself. MCR 450.681. However,

While an individual may appear *in propria personam*, a corporation, because of the very fact of its being a corporation, can appear only by attorney regardless of whether it is interested in its own corporate capacity or in a fiduciary capacity. A layman is not authorized to practice law merely because he is an employee of a corporate fiduciary.

Detroit Bar Assoc., supra., at 711.<sup>4</sup> A corporation may lawfully engage in a business authorized by the provisions of statute, and a corporation may employ counsel in and about its own business. MCL 450.681. It absolutely may not “render any service which cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.” MCL 450.681.

Defendant/Appellant’s employees who drafted Plaintiffs/Appellees mortgage, note, deed and property transfer documents were not licensed to practice law in Michigan or any other state. They were not law students or recent law graduates, or even former licensed attorneys. These

---

<sup>4</sup> This rule has been challenged by courts in Kent County, Michigan. The Honorable Dennis C. Kolenda has found this Court’s decision in Detroit Bar Assoc., supra. to be “obtuse and announc[ing] a rule which appears to make little sense.” Ohlman v Perfectype Inc., Kent County Circuit Court No. 92-76172-PS, at 5. (Appendix, Exhibit 7.) The court there found that amendments to the Court Rules had superceded this Court’s holding by permitting “a party” to make an appearance in court. Id. at 7. The lower courts in Kent County routinely rely on this ruling to permit apartment managers to appear at summary proceedings on behalf of apartment complexes “in pro per.” See e.g., Harvest Hill Apartments v Heil, 63<sup>rd</sup> District Court, Case No. R-99-0743-LT, Transcript of Landlord/Tenant Hearing, May 6, 1999, at 8. (Appendix, Exhibit 8.)



employees simply represented the Defendant/Appellee, a corporation. This, on its face, constitutes the unauthorized practice of law in this State.

Defendant/Appellant argues that its employees were representing only themselves in this transaction with Plaintiffs/Appellees, and therefore their actions were not prohibited. However, the legal documents drafted were, at least in part, drafted for the benefit of Plaintiffs/Appellees, they were reviewed with and for Plaintiffs/Appellees, and Plaintiffs/Appellees gave consideration for this service. This goes outside the realm of furnishing legal services only for itself. Neither the Defendant/Appellant, nor its employees, is authorized to practice law in this State. Therefore, Defendant/Appellant's non-attorney employees cannot legally prepare mortgages and other real estate documents and contracts for any borrower.

3. **The preparation of mortgage and other real estate documents and contracts for no charge is the unauthorized practice of law.**

A great deal has been said about the fees charged in the transaction between the Defendant/Appellant and Plaintiffs/Appellees. However, there are over thirteen (13) legal services organizations in Michigan, where attorneys provide legal services at no charge. See, Michigan Legal Assistance Network. Free Legal Aid in Michigan. No date.

[Http://www.mlan.net/field.htm](http://www.mlan.net/field.htm). In fact,

A lawyer should render public interest legal service. A lawyer may discharge this responsibility **by providing professional services at no fee** or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. . . .

MRPC 6.1 *Pro Bono* Publico Service, emphasis added. On the other hand, a lawyer shall not share legal fees with a nonlawyer or form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. MRPC 5.4(a), (b) Professional Independence of

a Lawyer.

The mere fact that a fee is charged for a legal service does not magically take it into the unauthorized practice of law. Every day, attorneys do services for no fee at all, and those services do not fall out of the realm of the practice of law. Conversely, where a non-attorney performs a legal service for no fee it still falls under the practice of law, and the act is therefore unauthorized. The preparation of mortgages and other real estate documents and contracts for a borrower by the Defendant/Appellant's non-attorney employees is the unauthorized practice of law, regardless of whether or not a fee for such services is charged by Defendant/Appellant.

**B. THE PRACTICE OF LAW BY NON-ATTORNEYS ENDANGERS THE CITIZENRY OF MICHIGAN AND THE INTEGRITY OF THE LEGAL SYSTEM.**

The right to practice law is a privilege granted by the State of Michigan "to those who attain certain standards of learning and character." Ayres, supra, at 596. Accordingly, it "may be surrounded with whatever the legislature may in reason prescribe." Id., citing State, ex rel Mackintosh v Rossman, 101 P 357; 53 Wash 1 (1909).

"The bar arose [] from a need to protect the public from unskilled persons practicing law." Cramer, supra, at 130. This Court has stated, by rule, that "[e]ffective legal service for each person in Michigan, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to the whole citizenry." MCR 8.120(A), emphasis added.

Non-attorneys are excluded from the practice of law, solely to achieve this goal of public protection. Cramer, supra, at 134, citing Oregon State Bar v Security Escrows, Inc, 377 P2d 334, 338; 233 Or 80 (1962).

Statutes disallowing the unauthorized practice of law are intended to protect and secure the public's interest in competent legal representation. A lay person who seeks legal services is often unable to judge whether he will receive proper professional attention. In addition, a client would forfeit recourse within the legal field against a non-attorney because only attorneys are subject to regulation within the profession and would have no recourse against a non-attorney in a malpractice action should the service provider act negligently in the performance of duties.

Bright, supra., at 805, citing In re Arthur, 15 Bankr 541 (Bankr ED Pa 1981). "It is this purpose of public protection which must dictate the construction we put on the term 'unauthorized practice of law.'" Cramer, supra., at 134.

Attorneys are subject to disciplinary proceedings. MCR 9.100, *et seq.* This is, in part, to help protect the integrity of the legal system. For example, when an attorneys is dealing with an unrepresented individual in any matter, the "lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands te lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding." MRPC 4.3, Dealing With an Unrepresented Person.

However, these disciplinary proceedings and attorney regulations do not apply to the activities and conduct of non-lawyers. The burden falls again on the licenced attorney:

With respect to a nonlawyer employed by, retained by, or associated with a lawyer: . . . a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if: the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved . . . .

MRPC 5.3(b), (c)(1), Responsibilities Regarding Nonlawyer Assistants. "As the legal assistant (paralegal) profession grows and matures, a significant number of professional organizations are implementing their own codes of ethics and professional responsibility tailored specifically to

legal assistants. Aguis, Margaret Lucas. CLA, Legal Assistants Section of State Bar of Michigan. "Michigan Bar Journal: Not Just for Lawyers." March 2001. Vol 80, No 3., at p 30. However, these rules are not universal.

MMLAP and other consumer advocates have seen numerous, severe abuses of the legal system by non-attorneys—ranging from simple negligence to outright fraud. For over ten (10) years, Esperanza Rosales provided immigration services illegally in the capacity of a "notary public" from an office in Hartford, Michigan. Michigan Legal Assistance Network.

"Farmworker Legal Services: Current News/Noticias." No date.

[Http://www.mlan.net/fwls/update\\_news/update.html](http://www.mlan.net/fwls/update_news/update.html). In the past several years, MMLAP has filed suit twice against Alfredo Rodriguez, John Watts, Timothy Maat and the Holland Law Office for unauthorized immigration practice on behalf of over 50 individuals. Acosta, supra, Aguilar, supra. A third lawsuit is being anticipated on behalf of at least a dozen additional individuals.

In the Spring of 2001, MMLAP filed a lawsuit on behalf thirteen (13) individuals regarding defective land contracts and mortgages prepared by or for Carlos Mendez, Futura Casa, L.L.C., B&P Mortgage, Inc. and B&P Group, Inc. Although the unauthorized practice of law was not alleged, the Defendants "simply filled in blanks on standard, preprinted form contracts." A review of such contracts indicates numerous legal errors, inconsistencies, and outright illegal provisions. Baron, supra.

MMLAP is also investigating several cases where non-attorneys/non-accountants have advised clients regarding exemptions to which they may be entitled and completed tax returns. Because these "tax-preparers" provided these clients with improper information, they asked for

and received tax exemptions to which they were not entitled. They are now facing large reimbursement requests from the IRS, as well as investigations regarding fraud.

These consumers of legal services need to be protected from the growing number of non-attorney individuals and agencies who are providing these services. These consumers are losing their homes, they are suffering the risk of deportation from this country, and they are suffering sometimes huge personal financial losses. As ruled by this Court, this consumer protection is extremely important to the citizenry of Michigan, regardless of their ability to pay for such services.

**C. DEFENDANT/APPELLANT VIOLATED THE MICHIGAN CONSUMER PROTECTION ACT WHEN IT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.**

The Michigan Consumer Protection Act, MCL 445.901, *et seq.*, makes “[u]nfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce [] unlawful . . . .” MCL 445.903(1). “The Act defines the term “trade or commerce” as “the conduct of business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.” Zine v Chrysler Corp, 236 Mich App 261, 270-271; 600 NW2d 384 (1999). The intent of the act is “to protect consumers in their purchases of goods which are primarily used for personal, family or household purposes.” The intent of the act is “to protect consumers in their purchases of goods which are primarily used for personal, family or household purposes.” Id., at 271.

1. **Defendant/Appellant is exempt not from prosecution of a claim by a consumer under the Michigan Consumer Protection Act.**

However, the Consumer Protection Act also exempts certain activities from inclusion under the Act. This act does not apply to “[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.” MCL 445.904(1)(a). In addition,

Except for the purposes of an action filed by a person under section 11, this act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act or practice that is made unlawful by any of the following: . . . The savings bank act, [MCL 487.3101, *et seq.*]

MCL 445.904(2)(d).<sup>5</sup>

These exemptions have recently been reviewed and interpreted by this Court in Smith v Globe Life Ins Co, 460 Mich 446; 597 NW2d 28 (1999). In that case, this Court determined that the relevant inquiry as to whether the general exemption provision of MCL 445.904(1)(a) is not whether the specific misconduct alleged by the plaintiffs is “specifically authorized.” Rather, it is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited. Id., at 465. As already noted, MCL 445.904(2)(a) specifically exempts from the Michigan Consumer Protection Act methods, acts, or practices made unlawful by The Savings Bank Act. However, the first phrase of that section explicitly provides that the exemption is inapplicable to actions filed under MCL 445.911. Id., at 466. This Court concluded that private actions were permitted under MCL 445.911, regardless of whether the insurer’s activities are “specifically authorized.” Id., at 467. It reasoned that

---

<sup>5</sup> Section 11 refers to MCL 445.911, which provides in relevant part that “[w]hether or not he seeks damages or has an adequate remedy at law, a person may bring an individual or class action for equitable relief and/or actual and statutory damages.”

although MCL 445.904(1)(a) generally provides that transactions or conduct “specifically authorized” are exempt from the provisions of the Consumer Protection Act, MCL 445.904(2) provides an exception to that exemption by permitting private actions pursuant to MCL 445.911 arising out of misconduct made unlawful by the applicable laws listed therein. *Id.* Accordingly, the exemptions provided under the Act are inapplicable to claims to the extent that they involve allegations of misconduct made unlawful under, for example, the Savings Bank Act, MCL 487.3101, *et seq.* *Id.*, at 467.

Based on this simple analysis, Defendant/Appellant is not exempt from prosecution by a consumer, i.e., Plaintiffs/Appellees, under the Michigan Consumer Protection Act, unless the allegations do not involve misconduct made unlawful under the Savings Bank Act.

**2. Defendant/Appellant’s activities are illegal under the Savings Bank Act and the exception to the exemption from prosecution by a consumer under the Michigan Consumer Protection Act applies.**

As noted by the Court of Appeals, below,

[T]he Savings Bank Act grants a savings bank, incorporated under the statute, the power to “engage in the business of banking and exercise all powers incidental to the business of banking or which further or facilitate the purposes of a savings bank.” MCL 487.3401(1).

Dressel v Ameribank, 247 Mich App 133, 144; 635 NW2d 328 (2001). A Savings Bank may establish and operate loan production offices to receive loan applications, process loans, assemble information related to the approval of loans, close loans, disburse loan proceedings, receive loan payments, and “[a]ny other activities as approved by rule, order, or declaratory rule of the commissioner.” MCL 487.3418.

The Savings Bank Act further allows a bank to “collect interest and charges on loans . . .

[a]s permitted by the credit reform act.” MCL 487.3430(1)(a); see Dressel, *supra*. The Credit Reform Act, MCL 445.1851, *et seq.*, permits a bank to charge a borrower fees and charges agreed upon or accepted by the borrower, so long as those fees are not excessive. *Id.*, at 144-145, citing MCL 445.1857(1). It also generally protects a lender from liability for violations of the Act so long as the lender has complied with federal Truth in Lending Law, 15 USC 1601, *et seq.*, and “shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. . . .An error in legal judgment with respect to a person’s obligations under this act is not a bona fide error.” MCL 445.1862(1).

The Savings Bank Act provides Defendant/Appellant with the power to engage in the business of banking—not in the business or practice of law. It enumerates activities that are included in the business of banking, but it just does not permit non-attorney bank employees to prepare, discuss, review and modify legal instruments such as mortgages, bank notes, and other loan documents and contracts. These activities are accordingly made unlawful under the Savings Bank Act, as they do not fall under the powers conferred upon a savings bank under the Act.

In addition, the Credit Reform Act, MCL 445.1851, *et seq.*, which is incorporated by reference by the Savings Bank Act specifically makes errors in legal judgment with respect to a person’s obligations under that Act the subject of liability on behalf of the bank or lending institution. It is Defendant/Appellant’s policy to have non-attorneys draft legal instruments. As noted repeatedly above, this is the unauthorized practice of law, and therefore, by permitting this policy to continue, Defendant/Appellant makes a grave error in legal judgment for which it should be liable—in this case, under the Michigan Consumer Protection Act, MCL 445.901, *et seq.*

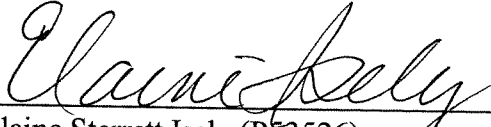


Defendant/Appellant's actions, as alleged by Plaintiffs/Appellees, involve misconduct made unlawful under the Savings Bank Act. Therefore, these actions constitute an exception to the exemptions contained in the Michigan Consumer Protection Act, and Defendant/Appellant is liable to Plaintiffs/Appellees accordingly.

#### **VIII. RELIEF REQUESTED**

For all of the reasons set forth herein, *Amicus Curiae*, the Michigan Migrant Legal Assistance Project, Inc. (MMLAP), respectfully requests that this Honorable Court review the totality of the circumstances and make a determination that the Defendant/Appellant regularly, and in this case herein, engages in the unauthorized practice of law, that such claims are compensable under the Michigan Consumer Protection Act, and any other relief that this Court deems equitable and just under the circumstances.

Dated: July 23, 2002

  
Elaine Sterrett Isely (P53526)  
Attorney for *Amicus Curiae*, Michigan Migrant  
Legal Assistance Project, Inc. (MMLAP)  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055

\esi

IN THE STATE OF MICHIGAN

IN THE SUPREME COURT

\* \* \* \* \*

Appeal from the Court of Appeals

Panel: Whitbeck, P.J., and Smolenski and Cooper, JJ.

PAUL DRESSEL and THERESA  
DRESSEL,

Plaintiffs/Appellees,

vs.

AMERIBANK,

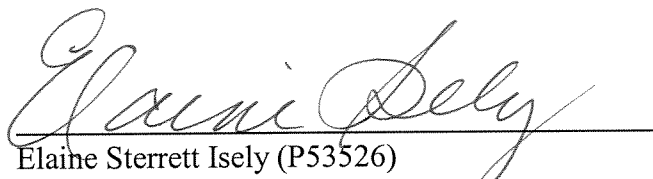
Defendant/Appellant.

Supreme Court Docket No. 119959

Court of Appeals Docket No. 222447

Kent County Circuit Court Case  
No. 98-013017-CP

**APPENDIX TO *AMICUS CURIAE* BRIEF**



Elaine Sterrett Isely (P53526)  
Attorney for *Amicus Curiae*, Michigan Migrant  
Legal Assistance Project, Inc.  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055

IN THE STATE OF MICHIGAN

IN THE SUPREME COURT

\*\*\*\*\*

Appeal from the Court of Appeals

Panel: Whitbeck, P.J., and Smolenski and Cooper, JJ.

PAUL DRESSEL and THERESA  
DRESSEL,

Plaintiffs/Appellees,

vs.

AMERIBANK,

Defendant/Appellant.

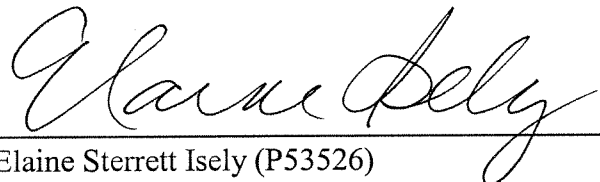
---

Supreme Court Docket No. 119959

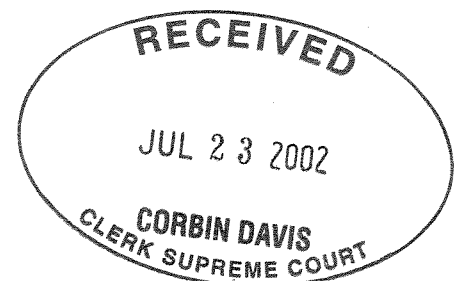
Court of Appeals Docket No. 222447

Kent County Circuit Court Case  
No. 98-013017-CP

APPENDIX TO AMICUS CURIAE BRIEF



Elaine Sterrett Isely (P53526)  
Attorney for *Amicus Curiae*, Michigan Migrant  
Legal Assistance Project, Inc.  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055



## APPENDIX

- Exhibit 1: Article: Byerley, Thomas K., Regulation Counsel of the State Bar of Michigan. "Unauthorized Practice of Law: Focus on Professional Responsibility." May, 1999. [Http://www.michbar.org/opinions/ethics/Articles/may99.html](http://www.michbar.org/opinions/ethics/Articles/may99.html).
- Exhibit 2: Consent Order for Permanent Injunction, Michigan State Bar v Alfredo Rodriguez, Ottawa County Circuit Court, Case No 99-33794-CZ.
- Exhibit 3: Complaint, Baron et al v Futura Casa LLC et al, US Dist Ct (WD Mich), Docket No. 1:01 CV 262.
- Exhibit 4: Complaint, Acosta et al v Alfredo Rodriguez et al, Ottawa Cty Cir Ct, Case No. 99-33894-NM.
- Exhibit 5: Complaint (less Exhibits), Aguilar et al v Alfredo Rodriguez et al, Ottawa Cty Cir Ct, Case No. 00-37999-NM
- Exhibit 6: Article, National Consumer Law Center. "Immigrant Justice in the Consumer Marketplace: Immigrant Consultant Fraud." 2001. [Http://www.consumerlaw.org/osi/miscellaneous/consultant\\_fraud.htm](http://www.consumerlaw.org/osi/miscellaneous/consultant_fraud.htm).
- Exhibit 7: Opinion, Ohlman v Perfectype Inc, Kent County Circuit Court No. 92-76172-PS.
- Exhibit 8: Transcript, Landlord/Tenant Hearing, Harvest Hill Apartments v Heil, 63<sup>rd</sup> District Court, Case No. R-99-0743-LT.

**EXHIBIT 1**

## FOCUS ON PROFESSIONAL RESPONSIBILITY

By: Thomas K. Byerley, Regulation Counsel

May, 1999

The State Bar of Michigan's Standing Committee on the Unauthorized Practice of Law actively monitors the activities of individuals and entities that engage in the unauthorized practice of law. Upon the recommendation of the Standing Committee and approval of the State Bar of Michigan's Board of Commissioners, the State Bar files litigation seeking permanent injunctions against individuals who violate the mandates of MCL 600.916.

Approximately every two years, the list of permanent injunctions is published for the benefit of lawyers and judges throughout the state. The following list is current through March 31, 1999.

### PERMANENT INJUNCTIONS-UNAUTHORIZED PRACTICE OF LAW

**KAREN ALT**, Circuit Court of Muskegon County, #89-25719-AW, nonlawyer holding self out as lawyer. Defendant enjoined from "advertising or otherwise representing defendant as an attorney, rendering legal advice to, and drafting documents for another, and appearing on behalf of any other person or entity in negotiating a claim or transaction of any kind or nature." Stipulated injunction entered 2/26/90.

**ROY ANDERSON, d/b/a ROY'S PARALEGAL AND COPY SERVICE**, Circuit Court of Wayne County, #95-520377-AZ, nonlawyer operating a "Paralegal and Copy Service" which includes writing legal motions and briefs which are filed "pro se" by customers. Defendant enjoined from practicing law in any form in this state, either individually or through any business entity, acting as representative or intermediary of other persons with regard to their legal matters, including the preparation of any legal documents on behalf of other persons. Injunction entered 2/21/96.

**EDWARD BARTOLI**, Circuit Court of Grand Traverse County, #91-9539-AW, inactive member of State Bar enjoined from "holding self out as person authorized to render legal services, adding, changing or deleting language on any form document in which defendant is not a party, and answering questions or offering legal opinions." Injunction entered 4/16/92.

**RONALD BESS**, Circuit Court of Branch County, #97-12-769, Mr. Bess was affiliated with Michigan Group Associates who would contact senior citizens regarding the purchase of living trusts for \$3,000.00. An injunction was entered by the court barring Mr. Bess from preparing estate planning documents on behalf of other persons. The injunction does allow Mr. Bess to engage in his present profession as an insurance agent. Injunction entered on December 15, 1998.

**JOHN B. BROWN**, Circuit Court of Washtenaw County, #89-37224-AW, nonlawyer holding self out as lawyer. Defendant enjoined from "advertising or otherwise representing self as an attorney, representing any party in any court of this state or any proceeding which involves the construction or interpretation of legal documents, advising any party regarding application of legal principles to a specific factual setting, and negotiating the terms of any agreement or the settlement of any claim." Injunction entered 8/16/89.

**ANTOINETTE DEFOE**, Circuit Court for the County of Berrien, 97-0756-CM, a paralegal engaging in activities that are reserved for attorneys. Defendant was hired to prepare a divorce and quit claim deed. The divorce judgment drafted by Defendant stated there was no marital property but two years after the divorce Defendant prepared a quit claim deed transferring property from the ex-husband to the ex-wife. This created a problem because the ex-husband had remarried and his current wife was entitled half of the property. The ex-wife was trying to sell the property but could not because a cloud on the title. The Consent Judgment bars Defendant from giving legal advice and preparing legal documents. Defendant can perform transcription services but she cannot add, delete or change language to standardized forms. Defendant must also post notice of her limitation in her business office and pay the complainants \$200.00. Injunction entered on 1/15/98.

**CHRISTIAN MEMORIAL CULTURAL CENTERS**, Circuit Court of Oakland County, #76-144703-AZ,

corporation and nonlawyer agents offering will and estate planning forms without lawyer review. Defendant enjoined from "preparing or typing wills or trust instruments" and from "counseling, advising or giving legal assistance in the drafting of wills", but was not enjoined from disseminating published materials and forms relating to wills, trusts, probate and estate planning. Defendant not enjoined from furnishing vouchers to customers to have wills or trusts prepared by an attorney of their choice or entering into arrangements with attorneys to have them prepare wills for customers. Original injunction entered 8/17/77; amended on 9/18/84.

**OWEN W. CRUMPACKER**, Circuit Court of Kalamazoo County, #C95-1815-AZ, disbarred Indiana lawyer holding himself out as attorney licensed in this state. Defendant enjoined from practicing law in any form in this state or from acting as representative or intermediary of other persons with regard to their legal matters. Defendant required to destroy all business or personal stationery, business cards or other printed material which identifies Defendant as an attorney. Ordered to pay costs to State Bar. Injunction entered 11/17/95.

**DUANE M.E. DAVIS**, Circuit Court of Wayne County, #89-928593-CZ, nonlawyer holding self out as lawyer. Defendant enjoined from "advertising or holding self out as an attorney, lawyer, counsel or specialist in any field of law, drafting documents for, giving legal advice to, or making appearances or communicating on behalf of any person." Injunction entered 2/1/90; contempt order entered 7/24/90, 30 days in jail, bond, costs and expenses. Arrested and convicted on 6/28/96 in Wayne County Circuit Court of felony offense of Obtaining Money Under False Pretenses for accepting a fee to perform legal services. Sentenced 7/25/96 to six months in jail, three years probation and \$7,903.00 in restitution.

**GREAT LAKES TITLE OF CADILLAC, INC., PATRICIA F. MARTIN and ROBERT G. MARTIN**, Circuit Court of Wexford County, #94-10836-CZ, nonlawyer agents of corporation preparing real estate documents. Defendants enjoined from drafting documents in which defendants are not a party and which purport to be tailored to a particular customer or particular transaction and may not add to, change, or delete language on preprinted forms or make suggestions or offer opinions about the applicability of a form or language to a particular transaction or particular customer. Defendants also enjoined from answering legal questions or offering comments or opinions regarding the terms, language, or effect of a particular document, or the claims, rights or responsibilities of any person in a particular transaction or for a particular customer or party. Defendant not enjoined from providing standardized form documents, providing general instructions relating to those documents, and providing scrivener services to fill in blank spaces in form documents if the name and address of the dictating person appears on the form under the designation "prepared by". Injunction entered 5/24/95.

**MARY LOU HOPKINS**, d/b/a the Missing Link, Circuit Court for the County of Calhoun, #97-4299-CZ, a paralegal engaged in activities reserved for attorneys. Ms. Hopkins would assist individuals by giving legal advice and preparing legal divorce papers without the supervision of a licensed attorney. The activities of Ms. Hopkins exceeded those allowed under the Cramer decision. Injunction entered 10/7/98.

**DONALD G. HUBER**, a/k/a D. GRAVATT HUBER, Circuit Court of Ingham County, #91-68953-AW, disbarred lawyer holding self out as lawyer. Defendant enjoined from "holding self out as an attorney at law without also stating that license has been and remains revoked, drafting documents for another person except that defendant may provide and fill in forms at the direction of a party, giving legal advice or offering opinions to others regarding legal implications, communicating on behalf of others, making demands for payment, accepting assignment of legal claims, or acting as intermediary for another in any legal claim." Injunction entered 11/13/91.

**CRAIG KLOPENSTINE**, Circuit Court of Jackson County, Case No. 98-087252, paralegal who has represented numerous "clients" without the supervision or direction of a licensed attorney. Mr. Klopenstine educated himself in the law while incarcerated. He served as a jailhouse lawyer and upon his release, he continued to practice law. He claims to have a "constitutional right" to practice law. Permanent injunction was entered 12/4/98. Klopenstine and his assigns are enjoined from giving legal advice and preparing legal documents.

**ERIC A. LINDQUIST**, Circuit Court of Wayne County, #95-520381-CZ, nonlawyer agent and major shareholder of corporations attempting to represent the corporations during litigation. Defendant permanently enjoined from practicing law in any form in this state on behalf of any corporation or other person and from acting as representative or intermediary of other persons or entities with regard to their legal matters. Injunction entered 2/6/96.

**DAVID (DODA) LULGJURAJ**, Circuit Court of Macomb County, #97-1391-CZ, nonlawyer "travel agent" who also accepts fees for processing immigration filings with the United States Immigration Service. Defendant permanently enjoined from preparing legal documents for other persons, giving legal advice to any person regarding their particular legal matter, acting as representative or intermediary of other persons with regard to their legal matters, including immigration matters. Injunction entered 9/08/97.

**MARGARET MAINARDI**, Circuit Court of Wayne County, #91-123925-AW, nonlawyer assisting *pro se* litigants. Defendant permanently enjoined from "drafting legal documents, giving legal advice, adding, amending and deleting language from legal form documents, selling or preparing forms for legal services other than preprinted standardized forms, acting as representative or intermediary of others with regard to legal matters, and hiring or contracting with licensed attorneys to provide legal services to others." Original injunction issued 2/28/92; Amended Order of Injunction entered 3/17/95.

Also, in In the Matter of Bright, U. S. Bankruptcy Court of the Eastern District of Michigan, #93-42713-S, the Bankruptcy Court permanently enjoined Mainardi from collecting raw data concerning debtor finances; actual preparation and filing for the debtor of Chapter 7 petitions, statements and schedules; deciding what information should be placed on forms and in what format; adding language to standard forms not dictated by debtor and transcribed verbatim; responding to debtor questions regarding interpretation or definition of terms; showing debtors reference books; providing information about remedies and procedures available in the bankruptcy system; and acting as an intermediary between debtor and attorney selected by nonlawyer. Injunction issued 8/9/94.

**EDWARD H. MARSILJE, THE TITLE OFFICE, INC., E.H.M., INC.**, Circuit Court of Ottawa County, #90-12350, title company drafting documents and giving legal advice. Defendants enjoined from "drafting documents in which defendants are not a party, adding, changing or deleting language on preprinted forms, making suggestions or offering opinions about the applicability of a form of language to a particular transaction or customer, answering questions or offering opinions or comments regarding terms, language or effect of a particular document with regard to a specific customer." Consent agreement and order for stipulated permanent injunction entered 8/13/90. Clarifying opinion entered 8/23/91.

**CHESTER McBRIDE**, Circuit Court of Iosco County, #86-105971-CZ, nonlawyer holding self out as attorney. Defendant enjoined from "advertising or representing himself to be an attorney, representing any party other than himself in any court of this state, the construction or interpretation of any legal document, advising any party in any matter involving application of legal principles to a specific factual setting, or negotiating the settlement of any claim." Preliminary injunction entered 1/8/87; permanent injunction entered 4/9/87.

**BEN MITCHELL, a/k/a BARRINGTON MITCHELL**, Circuit Court of Wayne County, #89-915540-AW, nonlawyer holding self out as lawyer. Defendant enjoined from "advertising or representing himself to be an attorney, representing any party other than himself in any court of this state, the construction or interpretation of any legal document, advising any party in any matter involving application of legal principles to a specific factual setting, or negotiating the settlement of any claim." Injunction entered 1/7/87; default contempt order entered 8/8/89; bench warrant issued 8/8/89; second contempt order entered 5/9/90, 30 days in jail, bond, costs and expenses. Arrested and convicted in Wayne County Recorder's Court, File No. 95-5294, of felony offense of Obtaining Money Under False Pretenses for accepting a fee to perform legal services. Sentenced on 7/20/95 to five years probation, alcohol treatment, community service and restitution.

**PAM MURRAY, PROFESSIONAL BUSINESS SERVICE, MICHIGAN/GENESEE LEGAL TYPING SERVICE**, Circuit Court of Genesee County, #92-14425-CZ, nonlawyer assisting *pro se* litigants and holding self out as lawyer. Defendants enjoined from "rendering legal advice, drafting legal documents, representing any other person or entity in negotiating any claim or transaction, adding, changing or deleting language when completing form documents, and giving legal advice regarding testimony to be given to the courts of this state." Stipulated order for permanent injunction entered 7/10/92. Defendant found in contempt on 11/5/92 for failure to make restitution. Defendant also found in contempt on 7/19/93 for violating injunction by providing legal advice and drafting legal documents; was sentenced to 30 days in jail.

**PARTNERSHIP ARBITRATION**, a partnership composed of **JAMES H. McQUILLAN, J. STEPHEN STOUT and KYLE ANDREWS**, Circuit Court of Genesee County, #93-19858-CZ, nonlawyers assisting *pro se* litigants. The three individual defendants and the partnership are enjoined from holding themselves out to the public as



qualified to render advice and service to persons interested in pursuing claims against Prudential Securities, Inc.; rendering counsel and a service to persons seeking to pursue claims against Prudential; furnishing or offering to furnish forms and documents with assistance in their completion to persons seeking to pursue claims against Prudential; representing parties in the initiation or prosecution of new and pending arbitration proceedings before any arbitration tribunal; and continuing to represent parties in the prosecution of arbitration proceedings before any arbitration tribunal. Injunction entered 12/3/93.

**ESPERANZA ROSALES**, Circuit Court for the County of Van Buren, Case No. 97-43-356-CP-B, Rosales has an office in Hartford, Michigan in which she gives legal services to the non-resident farm workers. She advertises and holds herself out as a "Notario". In Mexico and other Latin American countries a "Notario" is considered the equivalent of an attorney in the United States. Respondent does considerable INS immigration work for her customers and complaints against her date back to 1991. Farmworkers Legal Services initially filed suit against Ms. Rosales and the SBM intervened in the lawsuit. Rosales defaulted and never filed motion to set aside default. Rosales, however, consented to entered into a Consent Judgment that bars her from preparing legal documents, giving legal advice, holding herself out as an "notoria and/or abogada," etc. Consent Judgment entered 3/24/98.

**THEDFORD A. ROWSER**, Circuit Court of Oakland County, #95-509255-NZ, nonlawyer assisting *pro se* litigants. Defendant enjoined from preparing legal documents for other persons, and from adding, changing or deleting language when completing legal form documents except when defendant is performing scrivener services to standardized documents as dictated by a party; giving legal advice to any person regarding their particular legal matter; and from acting as representative or intermediary of other persons with regard to their legal matters. Restitution also ordered. Injunction entered 7/3/96.

**TODD J. SNIVELY**, Circuit Court of Oakland County, #90-382576-CZ, nonlawyer assisting *pro se* litigants. Snively enjoined from "advising third parties of their legal rights under FCRA, that TRW, Inc. has violated one or more aspects of FCRA, that they are entitled to file lawsuits against TRW for alleged violations, and preparing complaints or other pleadings and documents on behalf of any other parties." Injunction entered 1/17/90.

**LEIGH TRAVIS**, Circuit Court of Washtenaw County, #95-4861-AZ, nonlawyer Ph.D. assisting *pro se* litigants. Defendant enjoined from preparing documents which are not standardized form documents; from adding, changing, or deleting language when completing legal form documents, except when Defendant is performing scrivener services; giving any legal opinions to any person, including opinions regarding testimony to be given in courts; and acting as representative or intermediary of any person with regard to their legal matters. Injunction entered 11/22/95.

**RICHARD T. TRAVIS**, Circuit Court of Oakland County, #84-281751-AZ, nonlawyer holding self out as lawyer. Defendant enjoined from "representing himself as an attorney or qualified to practice law, offer or undertake to provide legal services, drafting legal documents, representing or appearing for any person, and providing legal advice." Injunction entered 10/1/84; contempt order entered 2/8/85; second contempt order entered 1/23/90.

**RICHARD VICKREY, A/K/A DALE GORDON, TROUBLE SHOOTERS, INC.**, Circuit Court of Genesee County, #95-38098-AZ, nonlawyer assisting *pro se* litigants. Parties permanently enjoined from preparing legal documents for other persons, and from adding, changing or deleting language when completing legal form documents, giving legal advice to any person regarding their particular legal matter, acting as representative or intermediary of other persons with regard to their legal matters, and must ensure that all advertising and information about defendant's services specify that defendants are not authorized to draft legal documents other than standardized forms, and only then if defendants provide only generalized instructions for completing the forms and secretarial services to typing customer-dictated responses on the forms. Injunction entered 10/4/95.

**MARY WASHINGTON, A/K/A MARY LEE AVANT, LEGALWORKS USA, INC., BSC DIVORCES, INC.**, Michigan corporations and their successors, Circuit Court of Washtenaw County, #90-38759-CZ, corporation and nonlawyer agents giving advice and drafting documents for *pro se* litigants. The corporate defendants are enjoined from "drafting legal forms for another, giving legal advice to any person, adding, changing or deleting language from legal form documents without the express instruction of a customer, that all advertising and information specify that defendants offer only the sale of preprinted standardized forms, generalized instructions for completing the forms and secretarial services, acting as representative or intermediary of

customers, and hiring or contracting with licensed lawyers to provide legal services for defendants' customers." Injunction entered 5/24/90; amended injunction entered 9/5/91; contempt order entered against LegalWorks USA, Inc. and BSC Divorces, Inc., 7/2/91.

Mary Washington, individually, and Legal Point, Inc., were permanently enjoined in Berrien County, File No. 96-3275-CZ-G, from drafting legal documents for others and giving legal advice to any person, adding, amending and deleting language in legal form documents, selling forms for legal services other than preprinted standardized forms, and acting as representative or intermediaries of customers with regard to their legal matters. Injunction entered 11/22/96.

**KENNETH WEBER**, Circuit Court of Jackson County, #91-57909-CZ, nonlawyer assisting *pro se* litigants. Defendant enjoined from "selecting language for, drafting and completing legal form documents, giving legal advice to any person, acting as representative or intermediary of customers with regard to their legal matters, communicating on behalf of customers with the court, opposing parties or counsel, and from appearing at hearings on behalf of customers." Injunction entered 7/19/91.

**EXHIBIT 2**

STATE OF MICHIGAN  
IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA

THE STATE BAR OF MICHIGAN,

Plaintiff,

Case No. 99-33794-CZ

vs.

ALFREDO RODRIGUEZ,

Defendant.

CONSENT ORDER FOR  
PERMANENT INJUNCTION

\_\_\_\_\_  
VICTORIA V. KREMSKI (P-48664)  
Attorney for Plaintiff  
306 Townsend St.  
Lansing, MI 48933  
(517) 346-6300

Douglas P. Vanden Berge (P-42112)  
Attorney for Defendant  
161 Ottawa Avenue, N.W.  
Suite 600  
Grand Rapids, MI 49503-2793  
\_\_\_\_\_

CONSENT ORDER FOR PERMANENT INJUNCTION

This matter, having come before the court upon the agreement of the parties,  
and the court, being fully advised herein:

**IT IS HEREBY ORDERED** that the Defendant is ordered to abide by the  
following conditions:

1. Unless Defendant, Rodriguez is both employed by and adequately  
supervised by a licensed Michigan attorney, Defendant, Alfredo Rodriguez, his,

assignees, employees, and agents are permanently enjoined from drafting legal documents for other persons, and from adding, changing, or deleting language when completing standardized and/or legal forms. Defendant may prepare an addendum or supporting statement to a standardized form, however he is limited to accurately translating the answers third parties give in response to the questions contained in the standardized forms.

2. That Defendant, his successors, assignees, employees and agents are permanently enjoined from giving legal advice to any person regarding their legal matter, including advice regarding testimony to be given in courts of this state.

3. That Defendant is ordered to ensure that all advertising and information, whether verbal or written, about the Defendant's services specify that he is a paralegal and not authorized to give legal advice. As long as Defendant is both employed by and adequately supervised by a licensed Michigan attorney, Defendant may draft legal documents, provided the documents are adopted by the supervising attorney as his or her own. If Defendant is not employed and adequately supervised by a licensed Michigan attorney, he is also ordered to ensure that all advertising and information, whether verbal or written, about his services, specify that he may not draft legal documents, other than standardized forms, and only then if Defendant provided generalized instructions for completing the forms and secretarial services for typing customer-dictated responses on the forms.

4. That Defendant is permanently enjoined from acting as a representative or intermediary of other persons with regard to their legal matters. However, nothing in this Order shall be construed to prevent Defendant from representation of others if Defendant meets the criteria for representation of others set forth in 8 CFR Section 292.1 and/or 292.2.

5. That Defendant is enjoined from stating or implying that he is an attorney, until such time as he is admitted to practice law in the State Courts in the State of Michigan.

6. The Defendant is enjoined from receiving funds for payment of legal services in his name alone or jointly with another person.

7. The provisions herein are applicable until such time, if ever, that Defendant becomes a licensed attorney in the State of Michigan.

8. The Defendant is required to file Proof of Compliance with the Court's Order and serve a copy on the Plaintiff no later than thirty days from the date of actual receipt of the Court Order. Defendant must provide that he is complying with all provisions of the Order.

9. That should Defendant fail to file Proof of Compliance with the Order or engage in other activity which violates the Order of this Court, Defendant shall be adjudicated in contempt.

10. This is a resolution of a disputed matter and Defendant does not make any admission of liability or waive any defenses to any civil action arising out of the allegations contained in the complaint.

11. That this court shall retain jurisdiction in this matter.

*Issued 1/3/2000  
@ 10:30 A.M.*

*Edmund R. Post*

CIRCUIT COURT JUDGE

Approved as to form and content:

*Douglas P. Vanden Berge*

Douglas P. Vanden Berge (P-42112)

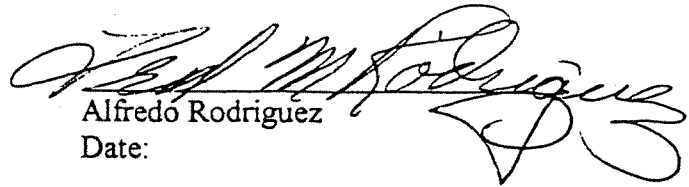
Attorney for Defendant

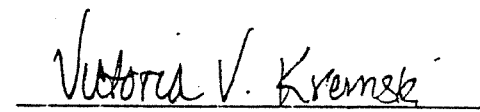
161 Ottawa Avenue N.W.

Suite 600

Grand Rapids, MI 49503

Date:

  
Alfredo Rodriguez  
Date:

  
Victoria V. Kremeski (P-48664)  
State Bar of Michigan  
306 Townsend Street  
Lansing, MI 48933  
(517) 346-6310  
Date: 12/27/99



**EXHIBIT 3**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

FILED - GR

01 APR 26 PM 2:49

CLERK  
U.S. DISTRICT COURT  
BY **COPY**

Maria Felix Baron, Victor Carmona, Miguel  
Castro, Eduardo Contreras, Gerardo Garcia-  
Gallegos, Josefina Gallegos, Jesus Jimenez  
aka Jesus Jimenez Resendez, Teresa Jimenez,  
Ana Rivera, Maria Saenz, Daniel Silva aka  
Daniel Silva Osequera, Esperanza Zuniga,  
and Ruben Zuniga.

Case No.

Plaintiffs

vs.

*1:01cv 262*  
Richard A. Enslen  
Chief, U.S. District Judge

Futura Casa, L.L.C., Carlos Mendez,  
B&P Mortgage, Inc., and B&P Group, Inc.,

**COMPLAINT**

Defendants

Michigan Migrant Legal Assistance Project, Inc.  
By: Elaine Sterrett Isely (P53526)  
Co-Counsel for Plaintiffs  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055

Michael O. Nelson (P23516)  
Co-Counsel for Plaintiffs  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 559-2665

**INTRODUCTION**

1. Plaintiffs are Hispanic individuals who entered into contracts to purchase homes from Futura Casa at grossly inflated prices. Through Futura Casa, defendants target Hispanic individuals who do not have or believe they do not have access to the mainstream real estate and mortgage markets and lack sophistication about the American real estate market. Defendants exploit that vulnerability by selling substandard property to Hispanics

at grossly inflated prices and upon unfavorable terms.

2. Defendants' conduct violates the Fair Housing Act, the Truth in Lending Act and state laws.

### **JURISDICTION**

3. This court has jurisdiction over the Fair Housing claims under 42 U.S.C. §3613, under the Truth in Lending claims under 15 U.S.C. §1640(e) and 28 U.S.C. §§1331 and 1337.
4. The court has supplemental jurisdiction over the state law claims under 28 U.S.C. §1367.

### **PARTIES**

5. All plaintiffs are natural persons of Hispanic heritage residing in the city of Grand Rapids, Kent County, Michigan.
6. Defendant Futura Casa LLC is a limited liability company doing business in the city of Grand Rapids Michigan.
7. Defendant, Carlos Mendez, is a natural person residing in the city of Grand Rapids, Kent County, Michigan, and doing business in the city of Grand Rapids, Kent County, Michigan.
8. Defendant, B&P Mortgage, Inc., is a Michigan corporation, engaged in the business leasing, selling and/or financing real property and operates in Kent and Ottawa Counties.
9. Defendant B&P Group, Inc. is a Michigan Corporation engaged in the business leasing, selling and/or financing real property and operates in Kent and Ottawa counties, Michigan.
10. Upon information and belief, Futura Casa was agent of B&P Mortgage, Inc. and B&P Group, Inc. B&P financed, controlled and profited from Futura Casa. Alternatively Futura

Casa and B&P are engaged in a joint venture. As a result, Futura Casa and B&P are jointly and severally liable for the violations described herein.

11. Defendant, Carlos Mendez, is a natural person, residing in the city of Grand Rapids, Kent County, Michigan, and doing business in the city of Grand Rapids, Kent County, Michigan, and at all relevant times herein employed by or associated with Futura Casa, LLC.
12. Defendant Mendez dealt with his own property and that of Futura Casa interchangeably and is properly chargeable for his actions whether purportedly acting for himself or for Futura Casa
13. At all times relevant to this cause of action, Defendants Futura Casa and B&P Mortgage, and B&P Group, Inc. in the ordinary course of their business, regularly extended or offered to extend, consumer credit for which a finance charge is or may be imposed or by written agreement which is payable in more than four (4) installments.

### **FACTUAL ALLEGATIONS**

#### **Daniel Silva and Maria Baron**

14. On or about June 14, 2000, Plaintiffs Daniel Silva and Maria Baron entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 715 Crofton St. SW, Grand Rapids, MI 49504.
15. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments. A copy of the sale agreement entered into in this transaction is attached,

marked Plaintiffs' Exhibit 1, and is incorporated by reference.

16. That contract discloses the following terms:

- a. Purchase price \$58,000
- b. Down payment \$3,000
- c. Balance of \$55,000 to be paid monthly at no disclosed amount with an interest rate at 11% annum.

17. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.

18. The reasonable value of the property is approximately one-half the purchase price charged to Daniel Silva and Maria Baron.

19. The property was seriously defective. Defects included the following:

- a. Trash accumulation in the basement and on the law;
- b. Leaking roof;
- c. Rotted flooring in the bathroom;
- d. In need of painting.

20. Defendants Carlos Mendez and/or Futura Casa had made promises to have the home painted and to have certain repairs made; to date, no repairs have been made and the painting was not done in a reasonable and/or workmanlike manner. In fact, the painters hired by Defendants caused additional damage, including but not necessarily limited to breaking several windows in the dining room.

21. On or about July 2000, employees of Futura Casa told Daniel Silva and Maria Baron that

they needed to refinance their home prior to August 17, 2000, which was allegedly required by their land contract.

22. On or about December 5, 2000, Defendants produced a second land contract, which was also alleged signed by Daniel Silva and Maria Baron on June 14, 2000. A copy of that contract is attached. Exhibit 2.
23. The terms of a land contract are similar to the terms of the purchase agreement. However, unlike the original land contract, this second contract includes a balloon payment clause, under which the entire balance must be paid by July 1, 2001.
24. Daniel Silva and Maria Baron do not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
25. Daniel Silva and Maria Baron did not sign this second contract, and they were not initially told that this transaction included a balloon clause.

**Victor Carmona**

26. On or about April 28, 2000, Plaintiff Victor Carmona entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 918 Norwich, Grand Rapids, MI 49503.
27. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than four (4) installments. A copy of the sale agreement entered into in this transaction is attached, marked Plaintiffs' Exhibit 3, and is incorporated by reference.
28. That contract discloses the following terms:
  - a. Purchase price               \$68,000

- b. Down payment \$3,000
  - c. Balance of \$65,000 to be paid at \$600 per month with an interest rate at 11% annum.
29. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.
30. The reasonable value of the property is approximately one-half the purchase price charged to Victor Carmona.
31. The property was seriously defective. Defects included the following:
- a. Wall coverings are in poor repair;
  - b. Many of the windows do not open;
  - c. The electrical wiring is in poor repair and electricity often shorts out;
  - d. There is a hole in the roof, and animals have entered the home;
  - e. The pipes in the bathroom are held together with duct tape;
  - f. "New" carpeting was laid and/or patched in the upstairs bedroom that does not match the rest of the room;
  - g. The interior doors upstairs were to be replaced because they were in disrepair.
32. Employees of Futura Casa are now telling Victor Carmona that he needs to refinance his home prior to July 1, 2001.
33. Victor Carmona does not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
34. Victor Carmona's land contract does not contain a balloon payment provision.

**Eduardo Contreras**

35. On or about July 11, 2000, Eduardo Contreras entered into an agreement to purchase property at 881 Sheridan S. W. Grand Rapids, Michigan, from Futura Casa. A copy of an agreement is attached, Exhibit 4.
36. The purchase agreement disclosed the following terms:
  1. Purchase price \$55,000
  2. Down payment \$3000
  3. Balance of \$52,000 to be paid at \$495.21 per month with interest at 11 percent per annum.
37. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.
38. The reasonable value of the property is approximately one-half the purchase price charged to Eduardo Contreras.
39. The property was seriously defective. Defects included the following:
  1. No floor covering and several rooms;
  2. There was no bathroom, no toilets;
  3. No running water; pipes were broken;
  4. The furnace did not work.
40. On or about January or February, 2001, employees of Futura Casa told Eduardo Contreras that he needed to sign a land contract. A copy of that contract is attached. Exhibit 5.
41. The terms of a land contract are similar to the terms of the purchase agreement.



However, unlike the purchase agreement, the land contract includes a balloon clause, under which the entire balance must be paid by September 1, 2001.

- 42. Eduardo Contreras does not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
- 43. Eduardo Contreras was not told that the land contract included a balloon clause.

**Gerardo Garcia-Gallegos and Josefina Gallegos**

- 44. On or about July 26, 2000, Plaintiffs Gerardo Garcia-Gallegos and Josefina Gallegos entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 33 Dwight S.W., Grand Rapids, MI 49506.
- 45. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments. A copy of the sale agreement entered into in this transaction is attached, marked Plaintiffs' Exhibit 6, and is incorporated by reference.
- 46. That contract discloses the following terms:
  - a. Purchase price           \$62,000
  - b. Down payment           \$3,000
  - c. Balance of \$59,000 to be paid at \$561.87 per month with an interest rate at 11% annum.
- 47. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.

48. The reasonable value of the property is approximately one-half the purchase price charged to Gerardo Garcia-Gallegos and Josefina Gallegos.
49. The property was seriously defective. Defects included the following:
- a. Roof was in disrepair;
  - b. No ceiling in one (1) of the upper bedrooms;
  - c. Rotting wood in entry-way;
  - d. Three (3) broken and/or missing windows;
  - e. The shower pipes are continuously clogged.
50. In or about the Fall of 2000, employees of Futura Casa told Gerardo Garcia-Gallegos and Josefina Gallegos that they needed to refinance their home prior to July 26, 2001, which was allegedly required by their land contract.
51. Gerardo Garcia-Gallegos and Josefina Gallegos do not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
52. Gerardo Garcia-Gallegos and Josefina Gallegos' land contract did not contain a balloon payment clause.

**Jesus and Teresa Jimenez**

53. On or about April 26, 2000, Plaintiffs Jesus and Teresa Jimenez entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 849 Lake Drive S.E., Grand Rapids, MI 49506.
54. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4)

installments. A copy of the sale agreement entered into in this transaction is attached, marked Plaintiffs' Exhibit 7, and is incorporated by reference.

55. That contract discloses the following terms:

- a. Purchase price           \$64,000
- b. Down payment           \$4,000
- c. Balance of \$60,000 to be paid at \$618 per month with an interest rate at 12%  
annum.

56. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than four (4) installments.

57. The reasonable value of the property is approximately one-half the purchase price charged to Jesus and Teresa Jimenez.

58. The property was seriously defective. Defects included the following:

- a. Leaking pipes in the bathroom and/or kitchen;
- b. Broken windows throughout the house;
- c. In need of fumigation for pest control, due the presence of rodents and/or  
cockroaches;
- d. In need of painting to the exterior of the home.

59. On or about June 15, 2000, Defendants Carlos Mendez and/or Futura Casa made promises to make all of the repairs to the home as listed about, as well as the reinstallation of a kitchen unit in the upstairs living area. See, Exhibit 8, attached herein and incorporated by reference.

60. None of the repairs have been made to date, except that plastic coverings have been applied to the windows.
61. In the Fall of 2000, employees of Futura Casa told Jesus and Teresa Jimenez that they needed to refinance their home prior to April 26, 2001, which was allegedly required by their land contract.
62. Jesus and Teresa Jimenez do not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
63. Jesus and Teresa Jimenez' land contract does not contain a balloon payment clause, and the interest rate (12%) is usurious.

**Miguel Castro and Ana Rivera**

64. On or about August 14, 2000, Plaintiffs Miguel Castro and Ana Rivera entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 1308 Broadway Avenue N.W., Grand Rapids, MI 49504.
65. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments. A copy of the sale agreement entered into in this transaction is attached, marked Plaintiffs' Exhibit 9, and is incorporated by reference.
66. That contract discloses the following terms:
  - a. Purchase price \$80,000
  - b. Down payment \$3,000
  - c. Balance of \$77,000 to be paid at \$733.29 per month with an interest rate at 11%

annum.

67. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than four (4) installments.
68. The reasonable value of the property is approximately one-half the purchase price charged to Miguel Castro and Ana Rivera.
69. The property was seriously defective. Defects included the following:
  - a. The roof was in disrepair;
  - b. The windows throughout the home do not open;
  - c. The doors are in disrepair;
  - d. The bathroom floor is rotting;
  - e. The pipes in the bathroom and/or kitchen leak;
  - f. The electrical wiring constantly shorts out.
70. Defendants Carlos Mendez and/or Futura Casa had made promises to do some or all of these repairs; to date, no repairs have been made.
71. Now, employees of Futura Casa have advised Miguel Castro and Ana Rivera that they need to refinance their home prior to September 1, 2001, which was allegedly required by their land contract.
72. Miguel Castro and Ana Rivera do not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
73. Miguel Castro and Ana Rivera were not told that their land contract included a balloon payment clause.

**Maria Saenz**

74. On or about July 1, 2000, Plaintiff Maria Saenz entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 1307 Burton S.W. Wyoming, MI 49509.
75. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.
76. That contract discloses the following terms:
- a. Purchase price           \$80,000
  - b. Down payment           \$3,000
  - c. Balance of \$77,000 to be paid at \$700 per month with an interest rate at 11% annum.
77. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.
78. The reasonable value of the property is approximately one-half the purchase price charged to Maria Saenz.
79. The property was seriously defective. Defects included the following:
- a. "New" carpeting was laid and/or patched that did not match the entire floor covering;
  - b. There are no screens in any of the windows;
  - c. There is no running water in the basement, although the basement was flooded

when Maria Saenz took possession;

- d. The bathtub was in disrepair and needed to be replaced;
  - e. The driveway was in disrepair and needed to be repaired;
  - f. The air-vents located throughout the home are located on the floor, and the vents are not sturdy enough to withstand any weight.
80. Defendants Carlos Mendez and/or Futura Casa had made promises that some or all of these repairs would be made; to date, no repairs have been made
81. Now, employees of Futura Casa are telling Maria Saenz that she needs to refinance her home, which is allegedly required by their land contract.
82. Maria Saenz does not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
83. Maria Saenz was not told that her land contract contained a balloon payment clause.

**Esperanza and Ruben Zuniga**

84. On or about April 21, 2000, Plaintiffs Esperanza and Ruben Zuniga entered in a consumer credit transaction with Defendants Futura Casa and Carlos Mendez, which consisted of a credit sale of the residence located at 112-114 Dwight S.W. Grand Rapids, MI 49506.
85. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments. A copy of the sale agreement entered into in this transaction is attached, marked Plaintiffs' Exhibit 10, and is incorporated by reference.
86. That contract discloses the following terms:

- a. Purchase price \$85,000
  - b. Down payment \$1,500
  - c. Balance of \$83,500 to be paid at \$795.00 per month with an interest rate at 11% annum.
87. Under this transaction, Defendants extended consumer credit for which a finance charge was imposed and which by written agreement was payable in more than hour (4) installments.
88. The reasonable value of the property is approximately one-half the purchase price charged to Esperanza and Ruben Zuniga.
89. At the time that the parties negotiated this transaction, employees of Futura Casa told Esperanza and Ruben Zuniga that they needed to refinance their home prior to April 21, 2001, which was allegedly required by their land contract.
90. Esperanza and Ruben Zuniga do not speak or read English. Although the transactions described above were carried out in Spanish, all the written disclosures were in English.
91. Esperanza and Ruben Zuniga's land contract does not include a balloon payment clause.

#### **COUNT I. FAIR HOUSING ACT**

92. Plaintiffs incorporate the foregoing paragraphs by reference.
93. By intentionally targeting individuals of Hispanic origin, because of national origin, in order to sell them substandard property at grossly inflated prices, defendants filed the Fair Housing Act, 42 U.S.C. § 3604 (b).

WHEREFORE, plaintiffs pray for the following relief, pursuant to 42 U.S.C. § 3613:

- A. Actual damages and punitive damages in an amount to be determined by the



court.

- B. Injunctive relief prohibiting defendants from continuing unlawful discrimination.
- C. For costs of this action and actual attorney fees.

## COUNT II. TRUTH IN LENDING

- 94. Plaintiffs incorporate the foregoing paragraphs by reference.
- 95. In each of the transactions described above, defendants failed to make the following disclosures:
  - A. The "amount financed" using that term;
  - B. The "finance charge" using that term;
  - C. The finance charge expressed as an "annual percentage rate" using that term;
  - D. The sum of the amount financed and the finance charge, using that term "total of payments";
  - E. The number and amount of payments scheduled to repay the total of payments;
  - F. A statement that a security interest has been taken in property which is purchased as part of the credit transaction.
- 96. Defendants violated the Truth in Lending Act, 15 U.S.C. § 1601 et seq. and Regulation Z, 15 C.F.R. § 226 by failing to make the disclosures described above, as required by TILA § 128, 15 U.S.C. 1638 and 15 C.F.R. § 226.17.
- 97. As a result, defendants are liable to each plaintiffs, under 15 U.S.C. § 1640, in an amount equal to twice the amount of the finance charge up to \$2000, plus costs of this action and actual attorney fees.

98. In each of the transactions described above, the finance charge exceeds \$1000.

WHEREFORE, plaintiffs pray for damages in the amount of \$2000 for each plaintiffs plus costs of this action and reasonable attorney fees.

### **COUNT III. MICHIGAN CONSUMER PROTECTION ACT**

99. Plaintiffs incorporate the foregoing paragraphs by reference.

100. At all times relevant hereto, defendants were engaged in the conduct of a business providing goods, property, or services primarily for personal or household purposes, including the solicitation, offering for sale or sale of real property and financial services, and were engaged in "trade or commerce" within the meaning of the Michigan Consumer Protection Act, M.C.L. 445.901 et seq.

101. The transactions described above were undertaken in the course of "trade or commerce".

102. Defendant violated the Michigan Consumer Protection Act by using unlawful, unfair, unconscionable and/or deceptive methods, acts and practices in the course of the transaction including the following specific violations:

1. By taking advantage of the consumer's inability reasonably to protect his or her interests by reason of inability to understand the language of an agreement, in violation of section 3 (x), M.C.L.A. 445.903;
2. By charging of the consumer a price that he is grossly in excess of the price at which similar property is sold, in violation of section 3 (z);
3. By failing material facts, the omission of which tends to mislead or deceive the consumer, and which facts could not reasonably be known by the consumer;

including the fact that the properties sold were grossly overpriced and defective.

4. By causing a probability of confusion or of misunderstanding as to the terms were conditions of credit in that defendants failed to inform the plaintiffs that land contracts contained balloon payments and that plaintiffs would probably not be able to obtain financing.

WHEREFORE, plaintiffs pray for the following relief pursuant to M.C.L. 445.911:

- A. For a declaratory judgment declaring that the acts and practices described above are unlawful under section 3 of the Consumer Protection Act, M.C.L. 445.903.
- B. For actual and statutory damages in an amount to be determined by the court.
- C. For costs of this action and reasonable attorney fees.

#### **COUNT IV. FRAUD**

103. Plaintiffs incorporate the foregoing paragraphs by reference.

104. In the course of the transactions described above, defendants made material misrepresentations of fact and concealed facts which they had a duty to disclose including the following:

1. Defendants failed to reveal the fact that they were charging excess of amounts for the properties in question;
2. Defendants represented that plaintiffs were purchasing the properties on long-term land contracts and concealed the fact that the contracts either included balloon payments or balloon payments would be inserted;
3. Defendants represented that plaintiffs would become owners of the properties they purchased and concealed the fact that many of the plaintiffs would not be able to

obtain financing and were therefore lose their properties;

4. Defendants failed to reveal the conditions of the properties.
105. Defendants knew these representations were false and made representations, or failed to disclose facts which they were under a duty to disclose with the intention that plaintiffs would act on the misrepresentations or failures to disclose.
106. Plaintiffs acted in reliance on defendants representations, to the detriment.

WHEREFORE plaintiffs request the following relief:

- A. Declaratory judgment declaring that each plaintiffs has the right to rescind the land contract or purchase agreement.
- B. Money judgment for the return of any money which each plaintiffs paid under the contract and any consequential damages.

#### **RELIEF REQUESTED**

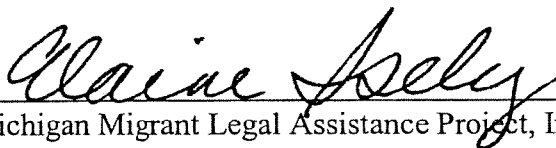
Plaintiffs respectfully request that this Honorable Court grant them a judgment against all Defendants for the following relief:

- A. Actual damages and punitive damages in an amount to be determined by the court, pursuant to 42 U.S.C. § 3613;
- B. Injunctive relief prohibiting defendants from continuing unlawful discrimination
- C. Damages in the amount of \$2000 for each plaintiff, pursuant to 15 U.S.C. § 1640;
- D. Declaratory relief, finding that Defendants' acts and practices described above are unlawful, pursuant to § 3 of the Michigan Consumer Protection Act, M.C.L. 445.903;
- E. Actual and statutory damages in an amount to be determined by the court,

pursuant to M.C.L. 445.911;

- F. Declaratory relief, finding that each plaintiff has the right to rescind the land contract or purchase agreement;
- G. Monetary relief, for the return of any monies paid by each plaintiff under their respective contracts, as well as any consequential damages;
- H. Costs, interest and actual and reasonable attorney fees.

Dated: April 26, 2001

  
Michigan Migrant Legal Assistance Project, Inc.  
By: Elaine Sterrett Isely (P53526)  
Co-Counsel for Plaintiffs  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055

Dated: April 26, 2001

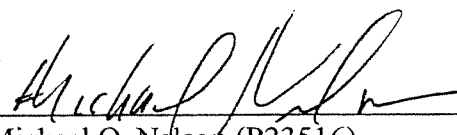
  
Michael O. Nelson (P23516)  
Co-Counsel for Plaintiffs  
648 Monroe N.W., Suite 318  
Grand Rapids, MI 49503  
(616) 559-2665

EXHIBIT 1

This Contract, is entered into on this June 14 day of 2000,  
between

Parties and Addresses FUTURA CASH LLC 49509  
934 West FULTON St Grand Rapids (the "Seller")  
and Daniel Silva Oseguera  
15001 Boulvard SW G R MI 49507 #

Description of Premises (the "Buyer") upon the following terms and conditions:  
1. The Seller agrees to sell to the Buyer land in Grand Rapids City/Townsh  
Kent County, Michigan with a street address of  
and legally described as:

715 Corlton  
Grand Rapids MI 49504

LOT #

PP # 17-01-159-015

together with all improvements, appurtenances, tenements and hereditaments (the "Premises" but subject to easements and restrictions of record and zoning laws and ordinances affecting 1 Premises.

Price and Terms 2. The Buyer agrees to purchase the Premises from the Seller, and to pay a purchase price

Fifty Eight Thousand Dollars  
(\$ 58,000.00), of which the sum of Three thousand

Dollars (\$ 3,000.00) has been paid, T  
Buyer agrees to pay to the Seller the balance of \$ Fifty Five Thousand

Dollars (\$ 55,000.00) together w

Interest on any principal from time to time unpaid, in the following manner:

The buyer shall pay on the  
1st each month

The interest mentioned above shall be at the rate of Eleven percent (11 %) p  
annum, from July 1st, 2000, comput

and first deducted from each payme  
with the remainder applied to principal. Each payment of principal and interest not paid when d  
shall be assessed a one time charge of five percent (5%), and in addition shall bear interest up  
the interest portion of the payment until paid at the above stated Contract interest rate but not  
exceed ten percent (10%). Both the late charge and the interest upon interest shall be separa  
amounts owed under this contract and shall be due and payable immediately upon the occuran  
of the default. All payments shall be made at 934 West FULTON ST  
Grand Rapids MI 49504, or wherever otherwise directed by the Seller.

Possession 3. The Buyer shall receive possession of the Premises on  
19, and shall be entitled to retain possession only so long as there is no default by Buy  
in carrying out the terms and conditions of this Contract. Possession is also subject to the follow  
ing rights of any tenants in possession:

Waste 4. The Buyer shall at all times maintain the Premises in the same condition it was in on th  
date of possession, reasonable wear and tear excepted, and the Buyer shall not commit  
suffer any other person to commit waste or, without the consent of the Seller in writing, remov  
change or demolish the improvements on the Premises in a way which may diminish Seller  
security.

Taxes 5. The Buyer shall pay all taxes and special assessments upon the Premises which she  
become due and payable after the date of this Contract before they become subject to penaltie  
and shall produce evidence of the payment to the Seller on demand.

Other tax provisions: Tax Insurance

Insurance 6. The Buyer shall obtain and keep in force fire and extended coverage insurance in the nam  
of the Seller covering the buildings and improvements now or hereafter placed on the Premise  
with a loss payable clause or other endorsement making the proceeds payable to the Seller and  
Buyer as their respective interests may appear, with Insurers satisfactory to the Seller in ar  
amount not less than the Insurable value of the Premises, and shall deliver copies of the insurance  
policies to the Seller with premium paid.

*Disposition  
of Insurance  
Proceeds*

7. In case of loss of damage as a result of which insurance proceeds are available in amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within 60 days of the loss or damage. If the election is made, insurance proceeds shall be used for that purpose. In the event the insurance proceeds are sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within 60 days of the loss of damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair or rebuilding. If the election, and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward the satisfaction of any existing debt under the terms of this Contract, and then as a prepayment upon the principal balance owing without penalty, notwithstanding any other provision to the contrary. The prepayment shall defer the time for payment of any remaining payments under paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract, shall be paid to Buyer.

*Insurance  
and/or  
Tax Default*

8. In case of failure of the Buyer to obtain, maintain, or deliver policies of insurance or to pay taxes or special assessments payable by the Buyer, the Seller may:

- (a) Pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract, or
- (b) Pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default, or
- (c) Not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

*Seller's  
Right to  
Mortgage*

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations:

- (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this Contract;
- (b) The aggregate payments of principal and interest required in any one year under the new or renewal mortgage or mortgages shall not exceed those required under this Contract;
- (c) The mortgage or mortgages shall not be amended to extend the term beyond the length of this Contract;
- (d) The Seller shall give to the Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal;
- (e) The Seller covenants to meet the payments of principal and interest as they mature on the mortgage now or hereafter placed upon the Premises and produce evidence of payment to the Buyer on demand; and
- (f) In case the Seller shall default upon any mortgage, the Buyer shall have the right to do whatever acts or make the payments necessary to cure the default and shall be reimbursed by the Seller by crediting credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, the Buyer shall be entitled to demand and receive the deed hereinafter mentioned subject to the mortgage indebtedness which the Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

*Seller to  
Perform  
Prior Land  
Contract*

10. If, at the time this Contract is executed, the Seller is purchasing the Premises on a prior land contract, the Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to the Buyers on demand. If the Seller shall default on any prior land contract obligations, the Buyer may cure the default and any payments by the Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which the Seller is purchasing the Premises, and if the Buyer is not in default, the Buyer shall be entitled to demand and receive an assignment of Seller's right, title, and interest in and to the prior land contract, provided that the Buyer shall assume and pay the prior land contract, and provided further that the prior land contract does not prohibit assignment.

*Enforcement  
on Default*

11. If the Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, the Seller may:

- (a) give the Buyer a written notice specifying the default and informing the Buyer that if the default continues for a period of fifteen days after service of the notice that the Seller may without further notice declare the entire balance due and payable, and proceed accordingly to the common law or the statutes of the State of Michigan; or
- (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan including but not limited to the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but in the event the Seller elects to proceed under the sub-paragraph the Seller shall give the Buyer a written notice of forfeiture specifying the default which has occurred and shall give the Buyer a period of fifteen days after service of the notice of forfeiture to cure the default.

*Assignment*

12. Either party may assign, sell, or convey an interest in this contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale, or conveyance, shall release the Buyer from obligations under the provisions of this Contract unless Seller releases the Buyer in writing.

*Buyer's  
Acceptance  
of Title and  
Premises*

13. The Buyer acknowledges having been previously advised to request an attorney at law to examine either:

- An abstract of title and tax history of the Premises certified to \_\_\_\_\_;
- A policy of title insurance or binder covering the Premises, dated \_\_\_\_\_.



and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and the manner required by this Contract, together with all other sums chargeable against the Buyer, and upon full performance of the covenants and agreements of the Buyer, the Seller shall convey the Premises to the Buyer or the Buyer's legal representative, successors or assigns by \_\_\_\_\_ deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by the Buyer and except those, if any, as shall have arisen through the acts of neglects of the Buyer or others holding through the Buyer. At the time of delivery of the deed the Seller will deliver all insurance policies mentioned in this Contract properly assigned by the Seller to the Buyer, and at Seller's expense either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

**Loan of  
Papers  
Service of  
Notices**

15. Upon request, the Seller shall deliver the abstract or the policy of title insurance or binder to the Buyer for a period not exceeding thirty (30) days, for which the Buyer shall give a receipt.  
16. Any and all notices or demands shall be sufficient when served as follows:  
(a) By personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or  
(b) By depositing the notice or demand in the United States Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.

**Time of  
Essence**

17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of the Seller to exercise any right upon default of the Buyer shall not constitute a waiver of any rights and shall not prevent the Seller from exercising any of rights upon subsequent default.

**Termination**

18. The term of this Contract shall terminate upon the date the last payment is due as set forth in paragraph 2 unless it shall sooner be terminated by its terms.

**Additional  
Provisions**

19. \_\_\_\_\_

**Binding  
Effect  
Effective  
Date**

20. The covenants and agreements of this Contract shall bind the heirs, assigns, and successors of the respective parties.

21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.  
Witnesses:

*[Signature]*

X Daniel Silva  
X Mary Felix Baron

STATE OF MICHIGAN

COUNTY OF Kent

S.S.

On this 14th day of June, 192000, before me, a notary public in and for said County, personally appeared \_\_\_\_\_

\_\_\_\_\_, the Seller, to me known to be the same person described in and who executed the contract and acknowledged that \_\_\_\_\_ executed it as his free act and deed.

Prepared by: \_\_\_\_\_

Notary Public, Kent County, Michigan

My commission expires: 10/28/2000

KAREN M. KUPNAT  
Notary Public, Kent County, MI  
My Commission Expires Oct. 21, 2000

EXHIBIT 2

## LAND CONTRACT

Parties and Address	THIS LAND CONTRACT is executed June 14, 2000 by <u>Futura Casa, L.L.C., 934 W. Fulton Grand Rapids, MI 49503</u> ("Seller") and <u>Daniel Silva Osequera, 150 Quigley Blvd., Grand Rapids, MI 49507</u> ("Buyer") upon the following terms and conditions:
Description of Premises	1. Seller agrees to sell to Buyer land in <u>Grand Rapids</u> City/Township, <u>Kent</u> County, Michigan with street address of <u>715 Crofton St. SW</u> and legally described as: <u>see attached exhibit A</u> . Together with all improvements, appurtenances, tenements and hereditaments (the Premises), but subject to easements and restrictions of record and zoning laws and ordinances affecting the Premises.
Price and Terms	2. Buyer agrees to purchase the Premises from Seller and to pay a purchase price of <u>Fifty Eight Thousand Dollars (\$58,000.00)</u> , of which the sum of <u>Three Thousand Dollars (\$3,000.00)</u> , has been paid. Buyer agrees to pay to Seller the balance of <u>Fifty Five Thousand Dollars (\$55,000.00)</u> , together with interest on any principal from time to time unpaid, in the following manner: <u>\$524.00</u> and No/100 Dollars, or at the buyer's option, on or before the <u>1st</u> day of <u>July</u> 2000 and each month following thereafter, provided however, the entire amount owing on this land contract is paid in full on or before <u>July 1, 2001</u> .
	The interest mentioned above shall be at the rate of <u>Eleven</u> percent ( <u>11</u> %) per annum, from <u>June 14, 2000</u> , computed <u>Monthly</u> and first deducted from each payment with the remainder applied to principal. Each payment of principal and interest not paid when due shall be assessed a one time charge of five percent (5%), and in addition shall bear interest upon the interest portion of the payment until paid at the above stated Contract interest rate but not to exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate amounts owed under this contract and shall be due and payable immediately upon the occurrence of the default. All payments shall be made at <u>(seller's direction)</u> or wherever otherwise directed by Seller.
Possession	3. Buyer shall receive possession of the Premises on <u>July 1, 2000</u> , and shall be entitled to retain possession only so long as there is no default by Buyer in carrying out the terms and conditions of this Contract. Possession is also subject to the following rights of any tenants in possession:
Waste	4. Buyer shall at all times maintain the Premises in the same condition it was in on the date of possession, reasonable wear and tear excepted, and Buyer shall not commit or suffer any other person to commit waste or, without the consent of Seller in writing, remove, change or demolish the improvements on the Premises in a way which may diminish Seller's security.
Taxes	5. Buyer shall pay all taxes and special assessments upon the Premises which shall become due and payable after the date of this Contract before they become subject to penalties, and shall produce evidence of the payment to Seller on demand.
	Other tax provisions: _____
Insurance	6. Buyer shall obtain and keep in force fire and extended coverage insurance in the name of Seller covering the buildings and improvements now or hereafter placed on the Premises with a loss payable clause or other endorsement making the proceeds payable to Seller and Buyer as their respective interests may appear, with insurers satisfactory to Seller in the amount not less than the insurable value of the Premises, and shall deliver copies of the insurance policies to Seller with premium paid.
Disposition of Insurance Proceeds	7. In case of loss or damage as a result of which insurance proceeds are available in an amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within sixty (60) days of the loss or damage. If the election is made, the insurance proceeds shall be used for that purpose. In the event the insurance proceeds are not sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within sixty (60) days of the loss or damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair and rebuilding. If the election and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward satisfaction of any existing defaults under the terms of this Contract, and then as a prepayment upon the

principal balance owing, without penalty, not withstanding any other provision to the contrary. The prepayment shall not defer the time for payment of any remaining payments under Paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract shall be paid to Buyer.

**Insurance  
and/or Tax  
Default**

8. In case of failure by Buyer to obtain, maintain or deliver policies of insurance or to pay taxes or special assessments payable by Buyer, Seller may: (a) pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract; (b) pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default; or (c) not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

**Seller's  
Right to  
Mortgage**

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations: (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this contract. (b) The aggregate payments of principle and interest required in any one year under the new or renewal mortgage(s) shall not exceed those required under this Contract; (c) The mortgage(s) shall not be amended to extend the term beyond the length of this Contract; (d) Seller shall give to Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal; (e) Seller covenants to meet the payments of principal and interest as they mature on any mortgage now or hereafter placed upon the Premises and produce evidence of payment to Buyer on demand; and (f) In case Seller shall default upon any mortgage, Buyer shall have the right to do the acts or make the payments necessary to cure the default and shall be reimbursed by receiving credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, Buyer shall be entitled to demand and receive the deed hereinafter mentioned, subject to the mortgage indebtedness which Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

**Seller to  
Perform  
Prior Land  
Contracts**

10. If, at the time this Contract is executed, Seller is purchasing the Premises on a land contract, Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to Buyer on demand. If Seller shall default on any prior land contract obligations, Buyer may cure the default and any payments by Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which Seller is purchasing the Premises, and if Buyer is not in default, Buyer shall be entitled to demand and receive an assignment of Seller's right, title and interest in and to the prior land contract, provided that Buyer shall assume and pay the prior land contract, and provide further that the prior land contract does not prohibit assignment.

**Enforcement  
on Default**

11. If Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, Seller may: (a) give Buyer written notice specifying the default and informing Buyer that, if the default continues for a period of fifteen days after service of the notice, Seller will without further notice declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan; or (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan, including, but not limited to, the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but, in the event Seller elects to proceed under the subparagraph, Seller shall give Buyer written notice of forfeiture specifying the default which has occurred and shall give Buyer a period of fifteen (15) days after service of the notice of forfeiture to cure the default. In the event of Buyer's default of this Contract or other non performance of any of the covenants or conditions contained in this contract on or before the date on which the performance is required, Buyer shall be responsible and pay for all of Seller's attorney fees and cost through all collections and enforcement proceedings including appeals.

**Assignment**

12. Either party may assign, sell or convey an interest in this Contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale or conveyance shall release Buyer from obligations under the provisions of this Contract unless Seller releases Buyer in writing.

**Buyer's  
Acceptance  
of Title and  
Premises**

13. Buyer acknowledges having been previously advised to request an attorney-at-law to examine either an abstract of title and tax history of the Premises certified to \_\_\_\_\_ or a policy of title insurance or binder covering the Premises dated \_\_\_\_\_, and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_.

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and manner required by this Contract, together with all other sums chargeable against Buyer, and upon full performance of the covenants and agreements of Buyer, Seller shall convey the Premises to Buyer or Buyer's legal representative, successors or assigns by warranty deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by Buyer.

have arisen through the acts of neglect of Buyer or other holding through Buyer. At the time of deliver of the deed, Seller will deliver all insurance policies mentioned in this Contract properly assigned by Seller to Buyer, and, at Seller's expense, either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

- Loan of Papers** 15. Upon request, Seller shall deliver the abstract or policy of title insurance or binder to Buyer for a period not exceeding thirty (30) days, for which Buyer shall give a receipt.
- Service of Notices** 16. Any and all notices or demands shall be sufficient when served as follows:  
(a) by personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or (b) by depositing the notice or demand in the United State Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.
- Time of Essence** 17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of Seller to exercise any right upon default of Buyer shall not constitute a waiver of any right and shall not prevent Seller from exercising any of his rights upon subsequent default.
- Termination** 18. The term of this Contract shall terminate upon the date the last payment is due as set forth in Paragraph 2 unless it shall be sooner terminated by its terms.
- Additional Provisions** 19. \_\_\_\_\_
- Binding Effect** 20. The covenants and agreements of this Contract shall bind the heirs, assigns and successors of the respective parties.
- Effective Date** 21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

Witnesses:

Lori W. John  
Lori W. John  
Cara Mendez  
Cara Mendez

Daniel Silva  
Daniel Silva  
Maria Felix Baron  
Maria Felix Baron

STATE OF MICHIGAN )  
COUNTY OF Kent ) ss.

On this 14 day of June, 2000, before me, a notary public in and for said County, personally appeared Daniel Silva + Maria Felix Baron, the Seller, to me known to be the same person (s) described in and who executed the Contract and acknowledged that they executed as their free act and deed.

Lori W. John  
Notary Public Kent County, MI  
My commission expires: Dec. 08, 02

Prepared by & Return to:

Futura Casa L.L.C.  
934 W. Fulton  
Grand Rapids, MI 49503

EXHIBIT 3

This Contract, Is entered into on this April day of 28 (19)2000  
between Futuras Cabas  
Parties and 934 West Fulton St. Grand Rapids  
Addresses (the "Seller")  
and Victor Carmona - 32 Sw. Andre. Sw.  
Grand Rapids, MI 49507.

Description  
of Premises

(the "Buyer") upon the following terms and conditions:  
1. The Seller agrees to sell to the Buyer land in Grand Rapids City/Township  
Kent County, Michigan with a street address of  
and legally described as:

918 Norwiche  
Grand Rapids MI 49503.

Price and  
Terms

together with all improvements, appurtenances, tenements and hereditaments (the "Premises")  
but subject to easements and restrictions of record and zoning laws and ordinances affecting  
Premises.

2. The Buyer agrees to purchase the Premises from the Seller, and to pay a purchase price  
Sixty Eight Thousand Dollars (\$ 68,000), of which the sum of Three Thousand

Dollars (\$ 3,000) has been paid.

Buyer agrees to pay to the Seller the balance of Sixty Five Thousand  
Dollars (\$ 65,000) together with

Interest on any principal from time to time unpaid, in the following manner:

The Buyer shall pay 1st day of each  
month \$ 600.00 (Six Hundred Dollars).

The interest mentioned above shall be at the rate of Eleven percent (11 %)  
annum, from June 18 (19)2000, computed

and first deducted from each payment  
with the remainder applied to principal. Each payment of principal and interest not paid when due  
shall be assessed a one time charge of five percent (5%), and in addition shall bear interest up to  
the interest portion of the payment until paid at the above stated Contract interest rate but not  
exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate  
amounts owed under this contract and shall be due and payable immediately upon the occurrence  
of the default. All payments shall be made at 934 West Fulton St. Sw  
Grand Rapids MI 49504, or wherever otherwise directed by the Seller.

Possession

3. The Buyer shall receive possession of the Premises on June 18  
(19)2000, and shall be entitled to retain possession only so long as there is no default by Buyer  
in carrying out the terms and conditions of this Contract. Possession is also subject to the following  
rights of any tenants in possession:

Waste

4. The Buyer shall at all times maintain the Premises in the same condition it was in on the  
date of possession, reasonable wear and tear excepted, and the Buyer shall not commit waste or  
suffer any other person to commit waste or, without the consent of the Seller in writing, remove  
change or demolish the improvements on the Premises in a way which may diminish Seller's  
security.

Taxes

5. The Buyer shall pay all taxes and special assessments upon the Premises which shall  
become due and payable after the date of this Contract before they become subject to penalties  
and shall produce evidence of the payment to the Seller on demand.

Other tax provisions:

The Buyer shall pay Taxes and  
Insurance.

Insurance

6. The Buyer shall obtain and keep in force fire and extended coverage insurance in the name  
of the Seller covering the buildings and improvements now or hereafter placed on the Premises  
with a loss payable clause or other endorsement making the proceeds payable to the Seller or  
Buyer as their respective interests may appear, with insurers satisfactory to the Seller in an  
amount not less than the insurable value of the Premises, and shall deliver copies of the insurance  
policies to the Seller with premium paid.

*Disposition  
of Insurance  
Proceeds*

7. In case of loss of damage as a result of which insurance proceeds are available in amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within 60 days of the loss or damage. If the election is made, insurance proceeds shall be used for that purpose. In the event the insurance proceeds are insufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or build by giving written notice of the election within 60 days of the loss of damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair and rebuilding. If the election, and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward the satisfaction of any existing default under the terms of this Contract, and then as a prepayment upon the principal balance owing without penalty, notwithstanding any other provision to the contrary. The prepayment shall defer the time for payment of any remaining payments under paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract, shall be paid to Buyer.

*Insurance  
and/or  
Tax Default*

8. In case of failure of the Buyer to obtain, maintain, or deliver policies of insurance or to pay taxes or special assessments payable by the Buyer, the Seller may:

- (a) Pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract, or
- (b) Pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default, or
- (c) Not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

*Seller's  
Right to  
Mortgage*

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations:

- (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this Contract;
- (b) The aggregate payments of principal and interest required in any one year under the new or renewal mortgage or mortgages shall not exceed those required under this Contract;
- (c) The mortgage or mortgages shall not be amended to extend the term beyond the length of this Contract;
- (d) The Seller shall give to the Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal;
- (e) The Seller covenants to meet the payments of principal and interest as they mature on a mortgage now or hereafter placed upon the Premises and produce evidence of payment to the Buyer on demand; and
- (f) In case the Seller shall default upon any mortgage, the Buyer shall have the right to do acts or make the payments necessary to cure the default and shall be reimbursed by Seller's credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, the Buyer shall be entitled to demand and receive the deed hereinafter mentioned subject to the mortgage indebtedness which the Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

*Seller to  
Perform  
Prior Land  
Contract*

10. If, at the time this Contract is executed, the Seller is purchasing the Premises on a prior land contract, the Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to the Buyer on demand. If the Seller shall default on any prior land contract obligations, the Buyer may cure the default and any payments by the Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon a prior land contract by which the Seller is purchasing the Premises, and if the Buyer is not in default, the Buyer shall be entitled to demand and receive an assignment of Seller's right, title, and interest in and to the prior land contract, provided that the Buyer shall assume and pay the prior land contract, and provided further that the prior land contract does not prohibit assignment.

*Enforcement  
on Default*

11. If the Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, the Seller may:

- (a) give the Buyer a written notice specifying the default and informing the Buyer that if the default continues for a period of fifteen days after service of the notice that the Seller may without further notice declare the entire balance due and payable, and proceed accordingly to the common law or the statutes of the State of Michigan; or
- (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan including but not limited to the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but in the event the Seller elects to proceed under the sub-paragraph the Seller shall give the Buyer a written notice of forfeiture specifying the default which has occurred and shall give the Buyer a period of fifteen days after service of the notice of forfeiture to cure the default.

*Assignment*

12. Either party may assign, sell, or convey an interest in this contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale, or conveyance, shall release the Buyer from obligations under the provisions of this Contract unless Seller releases the Buyer in writing.

*Buyer's  
Acceptance  
of Title and*

13. The Buyer acknowledges having been previously advised to request an attorney at law to examine either:

An abstract of title and tax history of the Premises certified to \_\_\_\_\_;



and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and the manner required by this Contract, together with all other sums chargeable against the Buyer, and upon full performance of the covenants and agreements of the Buyer, the Seller shall convey the Premises to the Buyer or the Buyer's legal representative, successors or assigns by \_\_\_\_\_ deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by the Buyer and except those, if any, as shall have arisen through the acts of neglects of the Buyer or others holding through the Buyer. At the time of delivery of the deed the Seller will deliver all insurance policies mentioned in this Contract properly assigned by the Seller to the Buyer, and at Seller's expense either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

**Loan of  
Papers  
Service of  
Notices**

15. Upon request, the Seller shall deliver the abstract or the policy of title insurance or binder to the Buyer for a period not exceeding thirty (30) days, for which the Buyer shall give a receipt.

16. Any and all notices or demands shall be sufficient when served as follows:

(a) By personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or

(b) By depositing the notice or demand in the United States Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.

**Time of  
Essence**

17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of the Seller to exercise any right upon default of the Buyer shall not constitute a waiver of any rights and shall not prevent the Seller from exercising any of rights upon subsequent default.

**Termination**

18. The term of this Contract shall terminate upon the date the last payment is due as set forth in paragraph 2 unless it shall sooner be terminated by its terms.

**Additional  
Provisions**

19. \_\_\_\_\_

**Binding  
Effect  
Effective  
Date**

20. The covenants and agreements of this Contract shall bind the heirs, assigns, and successors of the respective parties.

21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

Witnesses:

Cas M. [Signature]

[Signature]  
Victor Carmichael

STATE OF MICHIGAN

COUNTY OF Kent s.s.

On this 28th day of April, 1920, before me, a notary public in and for said County, personally appeared Rudra Case LLC

\_\_\_\_\_, the Seller, to me known to be the same person described in and who executed the contract and acknowledged that they executed it as their free act and deed.

Prepared by:

\_\_\_\_\_  
Notary Public, Kent County, Michigan

My commission expires: 10/28/2000

EXHIBIT 4

## LAND CONTRACT

**Parties and  
Address**

THIS LAND CONTRACT is executed July 11, 2000 by Futura Casa, L.L.C., 934 W. Fulton Grand Rapids, MI 49503 ("Seller") and Eduardo Contreras, Grand Rapids, MI 49507 ("Buyer") upon the following terms and conditions:

**Description  
of Premises**

1. Seller agrees to sell to Buyer land in Grand Rapids City/Township, Kent County, Michigan with street address of 881 Sherdan St. and legally described as: see attached exhibit A. Together with all improvements, appurtenances, tenements and hereditaments (the "Premises"), but subject to easements and restrictions of record and zoning laws and ordinances affecting the Premises.

**Price and  
Terms**

2. Buyer agrees to purchase the Premises from Seller and to pay a purchase price of Eighty Five Thousand (\$85,000.00), of which the sum of Three Thousand (\$3,000.00) Dollars has been paid. Buyer agrees to pay to Seller the balance of Eighty Two Thousand (\$82,000.00) Dollars, together with interest on any principal from time to time unpaid, in the following manner: \$495.21 and No/100 Dollars, or at the buyer's option, on or before the 1st day of October 2000 and each month following thereafter, provided however, the entire amount owing on this land contract is paid in full on or before 2001.

The interest mentioned above shall be at the rate of Eleven percent (11 %) per annum, from July 11, 2000, computed Monthly and first deducted from each payment with the remainder applied to principal. Each payment of principal and interest not paid when due shall be assessed a one time charge of five percent (5%), and in addition shall bear interest upon the interest portion of the payment until paid at the above stated Contract interest rate but not to exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate amounts owed under this contract and shall be due and payable immediately upon the occurrence of the default. All payments shall be made at (seller's direction) or wherever otherwise directed by Seller.

**Possession**

3. Buyer shall receive possession of the Premises on July 1, 2000, and shall be entitled to retain possession only so long as there is no default by Buyer in carrying out the terms and conditions of this Contract. Possession is also subject to the following rights of any tenants in possession:

**Waste**

4. Buyer shall at all times maintain the Premises in the same condition it was in on the date of possession, reasonable wear and tear excepted, and Buyer shall not commit or suffer any other person to commit waste or, without the consent of Seller in writing, remove, change or demolish the improvements on the Premises in a way which may diminish Seller's security.

**Taxes**

5. Buyer shall pay all taxes and special assessments upon the Premises which shall become due and payable after the date of this Contract before they become subject to penalties, and shall produce evidence of the payment to Seller on demand.

Other tax provisions: \_\_\_\_\_

**Insurance**

6. Buyer shall obtain and keep in force fire and extended coverage insurance in the name of Seller covering the buildings and improvements now or hereafter placed on the Premises with a loss payable clause or other endorsement making the proceeds payable to Seller and Buyer as their respective interests may appear, with insurers satisfactory to Seller in the amount not less than the insurable value of the Premises, and shall deliver copies of the insurance policies to Seller with premium paid.

**Disposition  
of Insurance  
Proceeds**

7. In case of loss or damage as a result of which insurance proceeds are available in an amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within sixty (60) days of the loss or damage. If the election is made, the insurance proceeds shall be used for that purpose. In the event the insurance proceeds are not sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within sixty (60) days of the loss or damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair and rebuilding. If the election and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward satisfaction of any existing defaults under the contract.

principal balance owing, without penalty, notwithstanding any other provision to the contrary. The prepayment shall not defer the time for payment of any remaining payments under Paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract shall be paid to Buyer.

**Insurance  
and/or Tax  
Default**

8. In case of failure by Buyer to obtain, maintain or deliver policies of insurance or to pay taxes or special assessments payable by Buyer, Seller may: (a) pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract; (b) pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default; or (c) not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

**Seller's  
Right to  
Mortgage**

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations: (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this contract; (b) The aggregate payments of principle and interest required in any one year under the new or renewal mortgage(s) shall not exceed those required under this Contract; (c) The mortgage(s) shall not be amended to extend the term beyond the length of this Contract; (d) Seller shall give to Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal; (e) Seller covenants to meet the payments of principal and interest as they mature on any mortgage now or hereafter placed upon the Premises and produce evidence of payment to Buyer on demand; and (f) In case Seller shall default upon any mortgage, Buyer shall have the right to do the acts or make the payments necessary to cure the default and shall be reimbursed by receiving credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, Buyer shall be entitled to demand and receive the deed hereinafter mentioned, subject to the mortgage indebtedness which Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

**Seller to  
Perform  
Prior Land  
Contracts**

10. If, at the time this Contract is executed, Seller is purchasing the Premises on a land contract, Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to Buyer on demand. If Seller shall default on any prior land contract obligations, Buyer may cure the default and any payments by Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which Seller is purchasing the Premises, and if Buyer is not in default, Buyer shall be entitled to demand and receive an assignment of Seller's right, title and interest in and to the prior land contract, provided that Buyer shall assume and pay the prior land contract, and provide further that the prior land contract does not prohibit assignment.

**Enforcement  
on Default**

11. If Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, Seller may: (a) give Buyer written notice specifying the default and informing Buyer that, if the default continues for a period of fifteen days after service of the notice, Seller will without further notice declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan; or (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan, including, but not limited to, the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but, in the event Seller elects to proceed under the subparagraph, Seller shall give Buyer written notice of forfeiture specifying the default which has occurred and shall give Buyer a period of fifteen (15) days after service of the notice of forfeiture to cure the default. In the event of Buyer's default of this Contract or other non performance of any of the covenants or conditions contained in this contract on or before the date on which the performance is required, Buyer shall be responsible and pay for all of Seller's attorney fees and cost through all collections and enforcement proceedings including appeals.

**Assignment**

12. Either party may assign, sell or convey an interest in this Contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale or conveyance shall release Buyer from obligations under the provisions of this Contract unless Seller releases Buyer in writing.

**Buyer's  
Acceptance  
of Title and  
Premises**

13. Buyer acknowledges having been previously advised to request an attorney-at-law to examine either an abstract of title and tax history of the Premises certified to \_\_\_\_\_ or a policy of title insurance or binder covering the Premises dated \_\_\_\_\_, and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_.

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and manner required by this Contract, together with all other sums chargeable against Buyer, and upon full performance of the covenants and agreements of Buyer, Seller shall convey the Premises to Buyer or Buyer's legal representative, successors or assigns by warranty

have arisen through the acts of neglect of Buyer or other holding through Buyer. At the time of deliver of the deed, Seller will deliver all insurance policies mentioned in this Contract properly assigned by Seller to Buyer, and, at Seller's expense, either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

**Loan of  
Papers**

15. Upon request, Seller shall deliver the abstract or policy of title insurance or binder to Buyer for a period not exceeding thirty (30) days, for which Buyer shall give a receipt.

**Service of  
Notices**

16. Any and all notices or demands shall be sufficient when served as follows:  
(a) by personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or (b) by depositing the notice or demand in the United State Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.

**Time of  
Essence**

17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of Seller to exercise any right upon default of Buyer shall not constitute a waiver of any right and shall not prevent Seller from exercising any of his rights upon subsequent default.

**Termination**

18. The term of this Contract shall terminate upon the date the last payment is due as set forth in Paragraph 2 unless it shall be sooner terminated by its terms.

**Additional  
Provisions**

19. \_\_\_\_\_

**Binding  
Effect**

20. The covenants and agreements of this Contract shall bind the heirs, assigns and successors of the respective parties.

**Effective  
Date**

21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

Edwards Contreras  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF MICHIGAN )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a notary public in and for said County, personally appeared \_\_\_\_\_, the Seller, to me known to be the same person (s) described in and who executed the Contract and acknowledged that \_\_\_\_\_ executed as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, MI  
My commission expires: \_\_\_\_\_

Prepared by & Return to:

Futura Casa L.L.C.  
934 W. Fulton  
Grand Rapids, MI 49503

EXHIBIT 5

**LAND CONTRACT**

Parties and Address	THIS LAND CONTRACT is executed <u>July 12, 2000</u> by <u>Futura Casa, L.L.C., 488 Kinney Ave., NW, Grand Rapids, MI 49544</u> ("Seller") and <u>Eduardo Contreras, a married man, 881 Sheridan Ave. S.W. Grand Rapids, MI 49503</u> ("Buyer") upon the following terms and conditions:
Description of Premises	1. Seller agrees to sell to Buyer land in <u>Grand Rapids</u> City/Township, <u>Kent</u> County, Michigan with street address of <u>881 Sheridan Ave. SW</u> and legally described as: <u>Lot 57, Rumsey Third Farm Addition to the City of Grand Rapids, Kent County, Michigan, as recorded in Liber 18 of Plats, Page 27. PP # 41-13-36-331-014.</u> Together with all improvements, appurtenances, tenements and hereditaments (the Premises"), but subject to easements and restrictions of record and zoning laws and ordinances affecting the Premises.
Price and Terms	2. Buyer agrees to purchase the Premises from Seller and to pay a purchase price of <u>Fifty Five Thousand and NO/100</u> Dollars (\$55,000.00 ), of which the sum of <u>Three Thousand and NO/100</u> Dollars (\$3,000. ), has been paid. Buyer agrees to pay to Seller the balance of <u>Fifty Two Thousand and no/100</u> Dollars (\$52,000.00 ), together with interest on any principal from time to time unpaid, in the following manner: <u>Four Hundred Ninety Five and 21/100 Dollars (\$495.21)</u> , at the buyer's option, on or before the <u>1st</u> day of <u>October, 2000</u> and each month following thereafter, provided however, the entire amount owing on this land contract is paid in full on or before <u>September 1, 2001</u> .  The interest mentioned above shall be at the rate of <u>Eleven</u> percent ( <u>11.00%</u> ) per annum, from <u>09/01, 2000</u> , computed <u>Monthly</u> and first deducted from each payment with the remainder applied to principal. Each payment of principal and interest not paid when due shall be assessed a one time charge of five percent (5%), and in addition shall bear interest upon the interest portion of the payment until paid at the above stated Contract interest rate but not to exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate amounts owed under this contract and shall be due and payable immediately upon the occurrence of the default. All payments shall be made <u>at 488 Kinney Ave., NW, Grand Rapids, MI 49544</u> or wherever otherwise directed by Seller.
Possession	3. Buyer shall receive possession of the Premises on <u>September 1, 2000</u> , and shall be entitled to retain possession only so long as there is no default by Buyer in carrying out the terms and conditions of this Contract. Possession is also subject to the following rights of any tenants in possession: _____
Waste	4. Buyer shall at all times maintain the Premises in the same condition it was in on the date of possession, reasonable wear and tear excepted, and Buyer shall not commit or suffer any other person to commit waste or, without the consent of Seller in writing, remove, change or demolish the improvements on the Premises in a way which may diminish Seller's security.
Taxes	5. Buyer shall pay all taxes and special assessments upon the Premises which shall become due and payable after the date of this Contract before they become subject to penalties, and shall produce evidence of the payment to Seller on demand.  Other tax provisions: _____
Insurance	6. Buyer shall obtain and keep in force fire and extended coverage insurance in the name of Seller covering the buildings and improvements now or hereafter placed on the Premises with a loss payable clause or other endorsement making the proceeds payable to Seller and Buyer as their respective interests may appear, with insurers satisfactory to Seller in the amount not less than the insurable value of the Premises, and shall deliver copies of the insurance policies to Seller with premium paid.
Disposition of Insurance Proceeds	7. In case of loss or damage as a result of which insurance proceeds are available in an amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within sixty (60) days of the loss or damage. If the election is made, the insurance proceeds shall be used for that purpose. In the event the insurance proceeds are not sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within sixty (60) days of the loss or damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair and rebuilding. If the election and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward satisfaction of any existing defaults under the terms of this Contract, and then as a prepayment upon the principal balance owing, without penalty, notwithstanding any other provision to the contrary. The prepayment shall not defer the time for payment of any remaining payments under Paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract shall be paid to Buyer.

**Insurance  
and/or Tax  
Default**

8. In case of failure by Buyer to obtain, maintain or deliver policies of insurance or to pay taxes or special assessments payable by Buyer, Seller may: (a) pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract; (b) pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default; or (c) not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

**Seller's  
Right to  
Mortgage**

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations: (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this contract. (b) The aggregate payments of principle and interest required in any one year under the new or renewal mortgage(s) shall not exceed those required under this Contract; (c) The mortgage(s) shall not be amended to extend the term beyond the length of this Contract; (d) Seller shall give to Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal; (e) Seller covenants to meet the payments of principal and interest as they mature on any mortgage now or hereafter placed upon the Premises and produce evidence of payment to Buyer on demand; and (f) In case Seller shall default upon any mortgage, Buyer shall have the right to do the acts or make the payments necessary to cure the default and shall be reimbursed by receiving credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, Buyer shall be entitled to demand and receive the deed hereinafter mentioned, subject to the mortgage indebtedness which Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

**Seller to  
Perform  
Prior Land  
Contracts**

10. If, at the time this Contract is executed, Seller is purchasing the Premises on a land contract, Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to Buyer on demand. If Seller shall default on any prior land contract obligations, Buyer may cure the default and any payments by Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which Seller is purchasing the Premises, and if Buyer is not in default, Buyer shall be entitled to demand and receive an assignment of Seller's right, title and interest in and to the prior land contract, provided that Buyer shall assume and pay the prior land contract, and provide further that the prior land contract does not prohibit assignment.

**Enforcement  
on Default**

11. If Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, Seller may: (a) give Buyer written notice specifying the default and informing Buyer that, if the default continues for a period of fifteen days after service of the notice, Seller will without further notice declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan; or (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan, including, but not limited to, the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but, in the event Seller elects to proceed under the subparagraph, Seller shall give Buyer written notice of forfeiture specifying the default which has occurred and shall give Buyer a period of fifteen (15) days after service of the notice of forfeiture to cure the default. In the event of Buyer's default of this Contract or other non performance of any of the covenants or conditions contained in this contract on or before the date on which the performance is required, Buyer shall be responsible and pay for all of Seller's attorney fees and cost through all collections and enforcement proceedings including appeals.

**Assignment**

12. Either party may assign, sell or convey an interest in this Contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale or conveyance shall release Buyer from obligations under the provisions of this Contract unless Seller releases Buyer in writing.

**Buyer's  
Acceptance  
of Title and  
Premises**

13. Buyer acknowledges having been previously advised to request an attorney-at-law to examine either an abstract of title and tax history of the Premises certified to \_\_\_\_\_ or a policy of title insurance or binder covering the Premises dated \_\_\_\_\_, and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_.

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and manner required by this Contract, together with all other sums chargeable against Buyer, and upon full performance of the covenants and agreements of Buyer, Seller shall convey the Premises to Buyer or Buyer's legal representative, successors or assigns by warranty deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by Buyer and except those, if any, as shall have arisen through the acts of neglect of Buyer or other holding through Buyer. At the time of



date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

- Loan of Papers** 15. Upon request, Seller shall deliver the abstract or policy of title insurance or binder to Buyer for a period not exceeding thirty (30) days, for which Buyer shall give a receipt.
- Service of Notices** 16. Any and all notices or demands shall be sufficient when served as follows:  
(a) by personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or (b) by depositing the notice or demand in the United State Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.
- Time of Essence** 17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of Seller to exercise any right upon default of Buyer shall not constitute a waiver of any right and shall not prevent Seller from exercising any of his rights upon subsequent default.
- Termination** 18. The term of this Contract shall terminate upon the date the last payment is due as set forth in Paragraph 2 unless it shall be sooner terminated by its terms.
- Additional Provisions** 19. None
- Binding Effect** 20. The covenants and agreements of this Contract shall bind the heirs, assigns and successors of the respective parties.
- Effective Date** 21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

**Witnesses:**

(signed)

(printed)

(signed)

(printed)

STATE OF MICHIGAN )

COUNTY OF Kent ) ss.

**Buyers:**

(signed)

(printed)

(signed)

(printed)

On this 12th day of July, 2000, before me, a notary public in and for said County, personally appeared \_\_\_\_\_, the Seller, to me known to be the same person (s) described in and who executed the Contract and acknowledged that \_\_\_\_\_ executed as \_\_\_\_\_ free act and deed.

Nancy Ann Dines

Notary Public Kent County, MI  
My commission expires: 1/09/04

Prepared by & return to when recorded:  
Futura Casa, L.L.C.  
488 Kinney Ave. N.W.  
Grand Rapids, MI 49544  
616-791-9220

EXHIBIT 6

This Contract, is entered into on this July 26 day of 2001  
between

Parties and  
Addresses

FUTURA CASA LLC  
934 West Foltan Grand Rapids MI 49504 (the "Seller")  
and GERNANDO GARCIA Colleges and JUSCELINA GARCIA  
33 Dwight SW GR MI 49506

Description  
of Premises

(the "Buyer") upon the following terms and conditions:  
1. The Seller agrees to sell to the Buyer land in GRAND RAPIDS City/Township  
County, Michigan with a street address of \_\_\_\_\_  
and legally described as:

33 Dwight SW  
GRAND RAPIDS MI 49506

Price and  
Terms

together with all improvements, appurtenances, tenements and hereditaments (the "Premises")  
but subject to easements and restrictions of record and zoning laws and ordinances affecting the  
Premises.

2. The Buyer agrees to purchase the Premises from the Seller, and to pay a purchase price  
Eighty two thousand Dollars  
(\$ 62,000), of which the sum of Three thousand  
Dollars (\$ 3,000.00) has been paid. The

Buyer agrees to pay to the Seller the balance of Fifty nine thousand  
Dollars (\$ 59,000) together with

Interest on any principal from time to time unpaid, in the following manner:

The Buyer shall pay on the  
1st of each month \$61.87

The interest mentioned above shall be at the rate of eleven percent (11%) per  
annum, from July 26, 2001; computed

and first deducted from each payment  
with the remainder applied to principal. Each payment of principal and interest not paid when due  
shall be assessed a one time charge of five percent (5%), and in addition shall bear interest up to  
the interest portion of the payment until paid at the above stated Contract interest rate but not  
exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate  
amounts owed under this contract and shall be due and payable immediately upon the occurrence  
of the default. All payments shall be made at 934 West Foltan Grand Rapids  
MI 49504, or wherever otherwise directed by the Seller.

Possession

3. The Buyer shall receive possession of the Premises on July 26, 2001  
and shall be entitled to retain possession only so long as there is no default by Buyer  
in carrying out the terms and conditions of this Contract. Possession is also subject to the follo  
ing rights of any tenants in possession:

Waste

4. The Buyer shall at all times maintain the Premises in the same condition it was in on the  
date of possession, reasonable wear and tear excepted, and the Buyer shall not commit  
suffer any other person to commit waste or, without the consent of the Seller in writing, remov  
change or demolish the improvements on the Premises in a way which may diminish Seller's  
security.

Taxes

5. The Buyer shall pay all taxes and special assessments upon the Premises which sh  
become due and payable after the date of this Contract before they become subject to penaltie  
and shall produce evidence of the payment to the Seller on demand.

Other tax provisions: tax insurance

Insurance

6. The Buyer shall obtain and keep in force fire and extended coverage insurance in the nam  
of the Seller covering the buildings and improvements now or hereafter placed on the Premises  
with a loss payable clause or other endorsement making the proceeds payable to the Seller or  
Buyer as their respective interests may appear, with insurers satisfactory to the Seller in a  
amount not less than the insurable value of the Premises, and shall deliver copies of the insuranc  
policies to the Seller with premium paid.

*Disposition  
of Insurance  
Proceeds*

7. In case of loss of damage as a result of which insurance proceeds are available in amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within 80 days of the loss or damage. If the election is made, insurance proceeds shall be used for that purpose. In the event the insurance proceeds are sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within 80 days of the loss of damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair or rebuilding. If the election, and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward the satisfaction of any existing debt under the terms of this Contract, and then as a prepayment upon the principal balance owed without penalty, notwithstanding any other provision to the contrary. The prepayment shall defer the time for payment of any remaining payments under paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract, shall be paid to Buyer.

*Insurance  
and/or  
Tax Default*

8. In case of failure of the Buyer to obtain, maintain, or deliver policies of insurance or to pay taxes or special assessments payable by the Buyer, the Seller may:

- (a) Pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract, or
- (b) Pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default, or
- (c) Not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

*Seller's  
Right to  
Mortgage*

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations:

- (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this Contract;
- (b) The aggregate payments of principal and interest required in any one year under the new or renewal mortgage or mortgages shall not exceed those required under this Contract;
- (c) The mortgage or mortgages shall not be amended to extend the term beyond the length of this Contract;
- (d) The Seller shall give to the Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal;
- (e) The Seller covenants to meet the payments of principal and interest as they mature on a mortgage now or hereafter placed upon the Premises and produce evidence of payment to the Buyer on demand; and
- (f) In case the Seller shall default upon any mortgage, the Buyer shall have the right to do the acts or make the payments necessary to cure the default and shall be reimbursed by the Seller for the credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, the Buyer shall be entitled to demand and receive the deed hereinafter mentioned subject to the mortgage indebtedness which the Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

*Seller to  
Perform  
Prior Land  
Contract*

10. If, at the time this Contract is executed, the Seller is purchasing the Premises on a prior land contract, the Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to the Buyer on demand. If the Seller shall default on any prior land contract obligations, the Buyer may cure the default and any payments by the Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which the Seller is purchasing the Premises, and if the Buyer is not in default, the Buyer shall be entitled to demand and receive an assignment of Seller's right, title, and interest in and to the prior land contract, provided that the Buyer shall assume and pay the prior land contract, and provided further that the prior land contract does not prohibit assignment.

*Enforcement  
on Default*

11. If the Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, the Seller may:

- (a) give the Buyer a written notice specifying the default and informing the Buyer that if the default continues for a period of fifteen days after service of the notice that the Seller will without further notice declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan; or
- (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan including but not limited to the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but in the event the Seller elects to proceed under the sub-paragraph the Seller shall give the Buyer a written notice of forfeiture specifying the default which has occurred and shall give the Buyer a period of fifteen days after service of the notice of forfeiture to cure the default.

*Assignment*

12. Either party may assign, sell, or convey an interest in this contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale, or conveyance, shall release the Buyer from obligations under the provisions of this Contract unless Seller releases the Buyer in writing.

*Buyer's  
Acceptance  
of Title and  
Premises*

13. The Buyer acknowledges having been previously advised to request an attorney at law to examine either:

- An abstract of title and tax history of the Premises certified to \_\_\_\_\_; or
- A policy of title insurance or binder covering the Premises, dated \_\_\_\_\_;

conveyance

14. Upon full final payment of the principal and interest of this Contract within the time and the manner required by this Contract, together with all other sums chargeable against the Buyer, and upon full performance of the covenants and agreements of the Buyer, the Seller shall convey the Premises to the Buyer or the Buyer's legal representative, successors or assigns by deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by the Buyer and except those, if any, as shall have arisen through the acts of neglects of the Buyer or others holding through the Buyer. At the time of delivery of the deed the Seller will deliver all insurance policies mentioned in this Contract properly assigned by the Seller to the Buyer, and at Seller's expense either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

Loan of  
Papers  
Service of  
Notices

15. Upon request, the Seller shall deliver the abstract or the policy of title insurance or binder to the Buyer for a period not exceeding thirty (30) days, for which the Buyer shall give a receipt.

16. Any and all notices or demands shall be sufficient when served as follows:

(a) By personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or

(b) By depositing the notice or demand in the United States Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.

Time of  
Essence

17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of the Seller to exercise any right upon default of the Buyer shall not constitute a waiver of any rights and shall not prevent the Seller from exercising any of rights upon subsequent default.

Termination

18. The term of this Contract shall terminate upon the date the last payment is due as set forth in paragraph 2 unless it shall sooner be terminated by its terms.

Additional  
Provisions

19.

Binding  
Effect  
Effective  
Date

20. The covenants and agreements of this Contract shall bind the heirs, assigns, and successors of the respective parties.

21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

Witnesses:

*[Signature]*

*[Signature]*

STATE OF MICHIGAN

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said County, personally appeared \_\_\_\_\_

\_\_\_\_\_, the Seller, to me known to be the same person described in and who executed the contract and acknowledged that \_\_\_\_\_ executed it as \_\_\_\_\_ free act and deed.

Prepared by:

Notary Public, \_\_\_\_\_ County, Michigan

My commission expires: \_\_\_\_\_

EXHIBIT 7

This Contract, Is entered into on this April 26 day of April 26, 192000  
between Futuras Casas

Parties and  
Addresses

and Jesus Jimenez Resendez (the "Seller")  
1071 Lafayette Ave NE. 49503

Description  
of Premises

(the "Buyer") upon the following terms and conditions:  
1. The Seller agrees to sell to the Buyer land in Grand Rapids City/Township  
Kent County, Michigan with a street address of  
and legally described as: 849 Lake Dr., Grand Rapids  
MI 49506

Lot #:

PP #:

together with all improvements, appurtenances, tenements and hereditaments (the "Premises")  
but subject to easements and restrictions of record and zoning laws and ordinances affecting  
Premises.

Price and  
Terms

2. The Buyer agrees to purchase the Premises from the Seller, and to pay a purchase price  
Sixty Four Dollars (\$ 64,000 - ), of which the sum of 4,000 Four thousand

Dollars (\$ 4,000 ) has been paid.

Buyer agrees to pay to the Seller the balance of Sixty thousand Dollars (\$ 60,000 ) together with

Interest on any principal from time to time unpaid, in the following manner: He will pay  
1st day of each month (May 1 - 2000) \$ 618.00  
(Six Hundred Eighty Dollars)

The interest mentioned above shall be at the rate of Twelve percent (12 %) annum, from May 1, 192000, computed

and first deducted from each payment with the remainder applied to principal. Each payment of principal and interest not paid when it shall be assessed a one time charge of five percent (5%), and in addition shall bear interest upon the interest portion of the payment until paid at the above stated Contract interest rate but not exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate amounts owed under this contract and shall be due and payable immediately upon the occurrence of the default. All payments shall be made at Seller's direction, or wherever otherwise directed by the Seller.

Possession

3. The Buyer shall receive possession of the Premises on May 1 (19)2000, and shall be entitled to retain possession only so long as there is no default by Buyer in carrying out the terms and conditions of this Contract. Possession is also subject to the following rights of any tenants in possession:

Waste

4. The Buyer shall at all times maintain the Premises in the same condition it was in on the date of possession, reasonable wear and tear excepted, and the Buyer shall not commit or suffer any other person to commit waste or, without the consent of the Seller in writing, remove or change or demolish the improvements on the Premises in a way which may diminish Seller's security.

Taxes

5. The Buyer shall pay all taxes and special assessments upon the Premises which shall become due and payable after the date of this Contract before they become subject to penalties and shall produce evidence of the payment to the Seller on demand.

Other tax provisions:

Insurance

6. The Buyer shall obtain and keep in force fire and extended coverage insurance in the name of the Seller covering the buildings and improvements now or hereafter placed on the Premises with a loss payable clause or other endorsement making the proceeds payable to the Seller or Buyer as their respective interests may appear, with insurers satisfactory to the Seller in an amount not less than the insurable value of the Premises, and shall deliver copies of the insurance policies to the Seller with premium paid.

*Disposition  
of Insurance  
Proceeds*

7. In case of loss of damage as a result of which insurance proceeds are available in amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within 60 days of the loss or damage. If the election is made, the insurance proceeds shall be used for that purpose. In the event the insurance proceeds are not sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within 60 days of the loss of damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair and rebuilding. If the election, and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward the satisfaction of any existing default under the terms of this Contract, and then as a prepayment upon the principal balance owing without penalty, notwithstanding any other provision to the contrary. The prepayment shall not defer the time for payment of any remaining payments under paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract, shall be paid to Buyer.

*Insurance  
and/or  
Tax Default*

8. In case of failure of the Buyer to obtain, maintain, or deliver policies of insurance or to pay taxes or special assessments payable by the Buyer, the Seller may:

- (a) Pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract, or
- (b) Pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default, or
- (c) Not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

*Seller's  
Right to  
Mortgage*

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations:

- (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this Contract;
- (b) The aggregate payments of principal and interest required in any one year under the new or renewal mortgage or mortgages shall not exceed those required under this Contract;
- (c) The mortgage or mortgages shall not be amended to extend the term beyond the length of this Contract;
- (d) The Seller shall give to the Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal;
- (e) The Seller covenants to meet the payments of principal and interest as they mature on a mortgage now or hereafter placed upon the Premises and produce evidence of payment to the Buyer on demand; and
- (f) In case the Seller shall default upon any mortgage, the Buyer shall have the right to do the acts or make the payments necessary to cure the default and shall be reimbursed by Seller by crediting credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, the Buyer shall be entitled to demand and receive the deed hereinafter mentioned subject to the mortgage indebtedness which the Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

*Seller to  
Perform  
Prior Land  
Contract*

10. If, at the time this Contract is executed, the Seller is purchasing the Premises on a prior land contract, the Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to the Buyers on demand. If the Seller shall default on any prior land contract obligations, the Buyer may cure the default and any payments by the Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which the Seller is purchasing the Premises, and if the Buyer is not in default, the Buyer shall be entitled to demand and receive an assignment of Seller's right, title, and interest in and to the prior land contract, provided that the Buyer shall assume and pay the prior land contract, and provided further that the prior land contract does not prohibit assignment.

*Enforcement  
on Default*

11. If the Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, the Seller may:

- (a) give the Buyer a written notice specifying the default and informing the Buyer that if the default continues for a period of fifteen days after service of the notice that the Seller will without further notice declare the entire balance due and payable, and proceed accordingly to the common law or the statutes of the State of Michigan; or
- (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan including but not limited to the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but in the event the Seller elects to proceed under the sub-paragraph the Seller shall give the Buyer a written notice of forfeiture specifying the default which has occurred and shall give the Buyer a period of fifteen days after service of the notice of forfeiture to cure the default.

*Assignment*

12. Either party may assign, sell, or convey an interest in this contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale, or conveyance, shall release the Buyer from obligations under the provisions of this Contract unless Seller releases the Buyer in writing.

*Buyer's  
Acceptance  
of Title and  
Premises*

13. The Buyer acknowledges having been previously advised to request an attorney at law to examine either:

- An abstract of title and tax history of the Premises certified to \_\_\_\_\_;
- A policy of title insurance or binder covering the Premises, dated \_\_\_\_\_.



and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and the manner required by this Contract, together with all other sums chargeable against the Buyer, and upon full performance of the covenants and agreements of the Buyer, the Seller shall convey the Premises to the Buyer or the Buyer's legal representative, successors or assigns by \_\_\_\_\_ deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by the Buyer and except those, if any, as shall have arisen through the acts of neglects of the Buyer or others holding through the Buyer. At the time of delivery of the deed the Seller will deliver all insurance policies mentioned in this Contract properly assigned by the Seller to the Buyer, and at Seller's expense either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

**Loan of  
Papers  
Service of  
Notices**

15. Upon request, the Seller shall deliver the abstract or the policy of title insurance or binder to the Buyer for a period not exceeding thirty (30) days, for which the Buyer shall give a receipt.

16. Any and all notices or demands shall be sufficient when served as follows:

- (a) By personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or
- (b) By depositing the notice or demand in the United States Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.

**Time of  
Essence**

17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of the Seller to exercise any right upon default of the Buyer shall not constitute a waiver of any rights and shall not prevent the Seller from exercising any of rights upon subsequent default.

**Termination**

18. The term of this Contract shall terminate upon the date the last payment is due as set forth in paragraph 2 unless it shall sooner be terminated by its terms.

**Additional  
Provisions**

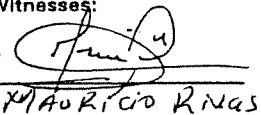
19. \_\_\_\_\_

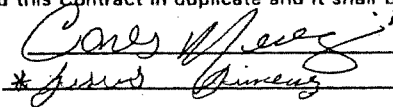
**Binding  
Effect  
Effective  
Date**

20. The covenants and agreements of this Contract shall bind the heirs, assigns, and successors of the respective parties.

21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

Witnesses:

  
MAURICIO RINAS

  
\* Carlos M. Rivas

STATE OF MICHIGAN

COUNTY OF \_\_\_\_\_ S.S.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a notary public in and for said County, personally appeared \_\_\_\_\_

\_\_\_\_\_, the Seller, to me known to be the same person described in and who executed the contract and acknowledged that \_\_\_\_\_ executed it as \_\_\_\_\_ free act and deed.

Prepared by: \_\_\_\_\_

Notary Public, \_\_\_\_\_ County, Michigan

My commission expires: \_\_\_\_\_

EXHIBIT 8

## Compromiso

Yo Carlos Mendez, como presidente de Futuras Casas he vendido en Land Contract la propiedad 849 Lake Dr, Grand Rapids, al Senor Jesús Jiménez.

Dicha propiedad Requiere de ciertas reparaciones como:

- 1) Liqueo en Zinc
  - 2) Reparación Ventana
  - 3) Plan de Funigación
  - 4) Pintar parte de afuera de la calle
  - 5) En el transcurso que permanezca la Land Contract, si el Sr. Jimenez necesita la construcción de la cosina en el 2nd piso.e le hara.
  - 6) Si es permitido por la ciudad se le construirá en la yarda un parqueo.
- leak*  
*5th fl -*  
*- Dr/KS Liro*  
*- he said he did*  
*NO*  
*- 2º apto.*  
*- getting space*

Tal y como se detallo, me comprometo a cumplir con todos los puntos.

## Compromisse

I Carlos Mendez, as President of Futura Casas, I have been selling in Land Contract the property 849 Lake Dr., Grand Rapids, MI, to the Sr. Jesus Jimenez.

This Property is requiring of some rapairements like:

- 1) Licking in the zinc
- 2) Repairmen in the windows
- 3) Pest Control
- 4) Painting part of outside of the house
- 5) In the transcurse of the time that we are with Land Contract, if the Sr. Jimenez needs the construction in the kitchen in the second floor, it is going to do.
- 6) If it is permitted by the city it is going to construct in the yard one parking.

I hereby acknowledge on all this points how is detailed, I have a compromise to complete with all this points.

Grand Rapids, MI

Thursday, June 15, 2000

Carlos Mendez  
Carlos Mendez

Jesus Jimenez  
Jesus Jimenez

EXHIBIT 9

STATE OF MICHIGAN  
COUNTY OF KENT  
RECEIVED FOR RECORD  
2000 OCT 20 AM 10:55

*[Signature]*  
REG. OF DEEDS

## MEMORANDUM OF LAND CONTRACT

THIS MEMORANDUM OF LAND CONTRACT entered into this 14th day of August, 2000, by and between:  
Futura Casa, L.L.C., a Michigan Limited Liability Company ("Seller")  
whose address is: 488 Kinney Ave. NW, Grand Rapids, MI 49544  
and Miquel Castro, A Single Man and Ana S. Rivera, A Single Woman ("Buyer")  
whose address is: 151 Straight Ave. SW, Grand Rapids, MI 49504

## WITNESSETH

WHEREAS, Buyer and Seller have entered into a Land Contract of even date herewith, and,

WHEREAS, the parties desire to enter into this Memorandum of Land Contract to give record notice of existence of said Land Contract.

NOW THEREFORTH, in consideration of the Premises and for other good and valuable consideration Seller acknowledges and agrees that they have sold to buyer on the Land Contract dated August 14, 2000, the following described premises situated in the City of Grand Rapids, County of Kent, and State of Michigan, to-wit:

Lot 237, Leonard & Co's Addition to the City of Grand Rapids, Kent County, Michigan, as recorded in Liber 2 of Plats, Page 16.

PP # 41-13-13-380-011.

Whose Address is: 1308 Broadway Ave. NW, Grand Rapids, MI 49504

The purpose of this Memorandum of Land Contract is to give record notice to the existence of the aforesaid Land Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Land Contract and have caused their hands and seals to be affixed hereto the day and year first above written.

Signed, Sealed and Delivered n Presence of:

*[Signature]*  
Carlos Mendez  
*[Signature]*  
Karen Kurnit

Sellers: Futura Casa LLC  
*[Signature]*  
Miquel A. Golembewski, Manager

Buyers:

Ana S. Rivera  
Ana S. Rivera  
Miquel A. Castro  
Miquel A. Castro

State of Michigan)  
County of )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August 2000 by

Drafted by and return to when recorded:  
Futura Casa, L.L.C.  
488 Kinney Ave. NW  
Grand Rapids, MI 49544

*[Signature]*  
Karen M. Kurnit  
Notary Public, Kent County, Michigan  
My Commission expires: 10/28/2002

## LAND CONTRACT

<b>Parties and Address</b>	THIS LAND CONTRACT is executed <u>August 14, 2000</u> by <u>Futura Casa, L.L.C., 488 Kinney Ave., NW, Grand Rapids, MI 49544 ("Seller") and Miquel Castro and Ana S. Rivera, 151 Straight Ave. SW, Grand Rapids, MI 49504 ("Buyer")</u> upon the following terms and conditions:
<b>Description of Premises</b>	1. Seller agrees to sell to Buyer land in <u>Grand Rapids</u> City/Township, <u>Kent</u> County, Michigan with street address of <u>1308 Broadway Ave. NW</u> and legally described as: <u>Lot 237, Leonard &amp; Co's Addition to the City of Grand Rapids, Kent County, Michigan, as recorded in Liber 2 of Plats, Page 16. PP # 41-13-13-380-011.</u> Together with all improvements, appurtenances, tenements and hereditaments (the Premises"), but subject to easements and restrictions of record and zoning laws and ordinances affecting the Premises.
<b>Price and Terms</b>	2. Buyer agrees to purchase the Premises from Seller and to pay a purchase price of <u>Eighty Thousand and NO/100</u> Dollars ( <u>\$80,000.00</u> ), of which the sum of <u>Three Thousand and NO/100</u> Dollars ( <u>\$3,000.</u> ), has been paid. Buyer agrees to pay to Seller the balance of <u>Seventy Seven Thousand and no/100</u> Dollars ( <u>\$77,000.00</u> ), together with interest on any principal from time to time unpaid, in the following manner: <u>Seven Hundred Thirty Three and 29/100 Dollars (\$733.29)</u> , at the buyer's option, on or before the <u>1st</u> day of <u>October, 2000</u> and each month following thereafter, provided however, the entire amount owing on this land contract is paid in full on or before <u>September 1, 2001</u> .
	The interest mentioned above shall be at the rate of <u>Eleven</u> percent ( <u>11.00%</u> ) per annum, from <u>09/01, 2000</u> , computed <u>Monthly</u> and first deducted from each payment with the remainder applied to principal. Each payment of principal and interest not paid when due shall be assessed a one time charge of five percent (5%), and in addition shall bear interest upon the interest portion of the payment until paid at the above stated Contract interest rate but not to exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate amounts owed under this contract and shall be due and payable immediately upon the occurrence of the default. All payments shall be made <u>at 488 Kinney Ave., NW, Grand Rapids, MI 49544</u> or wherever otherwise directed by Seller.
<b>Possession</b>	3. Buyer shall receive possession of the Premises on <u>September 1, 2000</u> , and shall be entitled to retain possession only so long as there is no default by Buyer in carrying out the terms and conditions of this Contract. Possession is also subject to the following rights of any tenants in possession: _____
<b>Waste</b>	4. Buyer shall at all times maintain the Premises in the same condition it was in on the date of possession, reasonable wear and tear excepted, and Buyer shall not commit or suffer any other person to commit waste or, without the consent of Seller in writing, remove, change or demolish the improvements on the Premises in a way which may diminish Seller's security.
<b>Taxes</b>	5. Buyer shall pay all taxes and special assessments upon the Premises which shall become due and payable after the date of this Contract before they become subject to penalties, and shall produce evidence of the payment to Seller on demand.
	Other tax provisions: _____
<b>Insurance</b>	6. Buyer shall obtain and keep in force fire and extended coverage insurance in the name of Seller covering the buildings and improvements now or hereafter placed on the Premises with a loss payable clause or other endorsement making the proceeds payable to Seller and Buyer as their respective interests may appear, with insurers satisfactory to Seller in the amount not less than the insurable value of the Premises, and shall deliver copies of the insurance policies to Seller with premium paid.
<b>Disposition of Insurance Proceeds</b>	7. In case of loss or damage as a result of which insurance proceeds are available in an amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within sixty (60) days of the loss or damage. If the election is made, the insurance proceeds shall be used for that purpose. In the event the insurance proceeds are not sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or rebuild by giving written notice of the election within sixty (60) days of the loss or damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair and rebuilding. If the election and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward satisfaction of any existing defaults under the terms of this Contract, and then as a prepayment upon the principal balance owing, without penalty, notwithstanding any other provision to the contrary. The prepayment shall not defer the time for payment of any remaining payments under Paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract shall be paid to Buyer.

**Insurance  
and/or Tax  
Default**

8. In case of failure by Buyer to obtain, maintain or deliver policies of insurance or to pay taxes or special assessments payable by Buyer, Seller may: (a) pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract; (b) pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default; or (c) not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

**Seller's  
Right to  
Mortgage**

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations: (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this contract. (b) The aggregate payments of principle and interest required in any one year under the new or renewal mortgage(s) shall not exceed those required under this Contract; (c) The mortgage(s) shall not be amended to extend the term beyond the length of this Contract; (d) Seller shall give to Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal; (e) Seller covenants to meet the payments of principal and interest as they mature on any mortgage now or hereafter placed upon the Premises and produce evidence of payment to Buyer on demand; and (f) In case Seller shall default upon any mortgage, Buyer shall have the right to do the acts or make the payments necessary to cure the default and shall be reimbursed by receiving credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, Buyer shall be entitled to demand and receive the deed hereinafter mentioned, subject to the mortgage indebtedness which Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

**Seller to  
Perform  
Prior Land  
Contracts**

10. If, at the time this Contract is executed, Seller is purchasing the Premises on a land contract, Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to Buyer on demand. If Seller shall default on any prior land contract obligations, Buyer may cure the default and any payments by Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which Seller is purchasing the Premises, and if Buyer is not in default, Buyer shall be entitled to demand and receive an assignment of Seller's right, title and interest in and to the prior land contract, provided that Buyer shall assume and pay the prior land contract, and provide further that the prior land contract does not prohibit assignment.

**Enforcement  
on Default**

11. If Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, Seller may: (a) give Buyer written notice specifying the default and informing Buyer that, if the default continues for a period of fifteen days after service of the notice, Seller will without further notice declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan; or (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan, including, but not limited to, the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but, in the event Seller elects to proceed under the subparagraph, Seller shall give Buyer written notice of forfeiture specifying the default which has occurred and shall give Buyer a period of fifteen (15) days after service of the notice of forfeiture to cure the default. In the event of Buyer's default of this Contract or other non performance of any of the covenants or conditions contained in this contract on or before the date on which the performance is required, Buyer shall be responsible and pay for all of Seller's attorney fees and cost through all collections and enforcement proceedings including appeals.

**Assignment**

12. Either party may assign, sell or convey an interest in this Contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale or conveyance shall release Buyer from obligations under the provisions of this Contract unless Seller releases Buyer in writing.

**Buyer's  
Acceptance  
of Title and  
Premises**

13. Buyer acknowledges having been previously advised to request an attorney-at-law to examine either an abstract of title and tax history of the Premises certified to \_\_\_\_\_ or a policy of title insurance or binder covering the Premises dated \_\_\_\_\_, and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_.

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and manner required by this Contract, together with all other sums chargeable against Buyer, and upon full performance of the covenants and agreements of Buyer, Seller shall convey the Premises to Buyer or Buyer's legal representative, successors or assigns by warranty deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by Buyer and except those, if any, as shall have arisen through the acts of neglect of Buyer or other holding through Buyer. At the time of

date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

- Loan of Papers** 15. Upon request, Seller shall deliver the abstract or policy of title insurance or binder to Buyer for a period not exceeding thirty (30) days, for which Buyer shall give a receipt.
- Service of Notices** 16. Any and all notices or demands shall be sufficient when served as follows:  
(a) by personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or (b) by depositing the notice or demand in the United State Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.
- Time of Essence** 17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of Seller to exercise any right upon default of Buyer shall not constitute a waiver of any right and shall not prevent Seller from exercising any of his rights upon subsequent default.
- Termination** 18. The term of this Contract shall terminate upon the date the last payment is due as set forth in Paragraph 2 unless it shall be sooner terminated by its terms.
- Additional Provisions** 19. \_\_\_\_\_
- Binding Effect** 20. The covenants and agreements of this Contract shall bind the heirs, assigns and successors of the respective parties.
- Effective Date** 21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

**Witnesses:**

(signed) Carlos Mendez  
(printed) Carlos Mendez  
(signed) Laren Kurnat  
(printed) Laren Kurnat

**Buyers:**

(signed) Miguel A. Castro  
(printed) Miguel Castro  
(signed) Ana S. Rivera  
(printed) Ana S. Rivera

STATE OF MICHIGAN )  
COUNTY OF Kent ) ss.

On this 14<sup>th</sup> day of August, 2000, before me, a notary public in and for said County, personally appeared Miguel Castro + Ana S. Rivera, the Seller, to me known to be the same person (s) described in and who executed the Contract and acknowledged that they executed as their free act and deed.

Laren M. Kurnat  
Laren M. Kurnat  
Notary Public Kent County, MI  
My commission expires: 10/28/2000

Prepared by & return to when recorded:  
Futura Casa, L.L.C.  
488 Kinney Ave. N.W.  
Grand Rapids, MI 49544  
616-791-9220



EXHIBIT 10

This Contract, is entered into on this April 21 day of 1920  
between Futura Casas

Parties and  
Addresses

and Ruben Angel Zuniga and Esperanza Zuniga (the "Seller")  
1131 Lafayette Ave. Grand Rapids MI 49503.

Description  
of Premises

(the "Buyer") upon the following terms and conditions:  
1. The Seller agrees to sell to the Buyer land in Grand Rapids City/Township  
Kent County, Michigan with a street address of  
and legally described as: 112-114 Dwight, Grand Rapids  
MI 49506.

Lot #

PP #

Price and  
Terms

together with all improvements, appurtenances, tenements and hereditaments (the "Premises")  
but subject to easements and restrictions of record and zoning laws and ordinances affecting  
Premises.

2. The Buyer agrees to purchase the Premises from the Seller, and to pay a purchase price  
Eighty Five Thousand Dollars (\$ 85,000.00), of which the sum of 1500 One Thousand Five  
Hundred Dollars (\$ 1,500.00) has been paid.

Buyer agrees to pay to the Seller the balance of Eighty Three Thousand and  
Five Hundred Dollars (\$ 83,500.00) together with  
interest on any principal from time to time unpaid, in the following manner: They will  
pay 1st day of each month (June 1-2000) \$ 795.00  
(Seven Hundred Ninety Five Dollars) monthly payment  
They will pay

The interest mentioned above shall be at the rate of eleven percent (11 %)  
annum, from June 1, 1920, computed

and first deducted from each payment  
with the remainder applied to principal. Each payment of principal and interest not paid when  
shall be assessed a one time charge of five percent (5%), and in addition shall bear interest up  
the interest portion of the payment until paid at the above stated Contract interest rate but not  
exceed ten percent (10%). Both the late charge and the interest upon interest shall be separate  
amounts owed under this contract and shall be due and payable immediately upon the occurrence  
of the default. All payments shall be made at Seller's direction

Possession

3. The Buyer shall receive possession of the Premises on June 1  
1920, and shall be entitled to retain possession only so long as there is no default by Buyer  
in carrying out the terms and conditions of this Contract. Possession is also subject to the following  
rights of any tenants in possession:

Waste

4. The Buyer shall at all times maintain the Premises in the same condition it was in on the  
date of possession, reasonable wear and tear excepted, and the Buyer shall not commit  
suffer any other person to commit waste or, without the consent of the Seller in writing, remove  
change or demolish the improvements on the Premises in a way which may diminish Seller's  
security.

Taxes

5. The Buyer shall pay all taxes and special assessments upon the Premises which shall  
become due and payable after the date of this Contract before they become subject to penalties  
and shall produce evidence of the payment to the Seller on demand.

Other tax provisions:

Insurance

6. The Buyer shall obtain and keep in force fire and extended coverage insurance in the name  
of the Seller covering the buildings and improvements now or hereafter placed on the Premises  
with a loss payable clause or other endorsement making the proceeds payable to the Seller or  
Buyer as their respective interests may appear, with insurers satisfactory to the Seller in an  
amount not less than the insurable value of the Premises, and shall deliver copies of the insurance  
policies to the Seller with premium paid.

*Disposition  
of Insurance  
Proceeds*

7. In case of loss of damage as a result of which insurance proceeds are available in amount sufficient to repair or rebuild the Premises, Buyer has the right to elect to use the insurance proceeds to repair or rebuild. In order to elect to exercise the right, Buyer must give Seller written notice of the election within 60 days of the loss or damage. If the election is made, insurance proceeds shall be used for that purpose. In the event the insurance proceeds are sufficient to repair or rebuild the Premises, Buyer may elect to use the proceeds to repair or build by giving written notice of the election within 60 days of the loss of damage, and along with the notice, deposit with Seller an amount sufficient to provide for full payment of the repair or rebuilding. If the election, and deposit if required, are not timely made, the insurance proceeds shall be applied on this Contract. If the insurance proceeds exceed the amount required for repairing and rebuilding, the excess shall be applied first toward the satisfaction of any existing default under the terms of this Contract, and then as a prepayment upon the principal balance owing without penalty, notwithstanding any other provision to the contrary. The prepayment shall defer the time for payment of any remaining payments under paragraph 2. Any surplus of proceeds in excess of the balance owing on this Contract, shall be paid to Buyer.

*Insurance  
and/or  
Tax Default*

8. In case of failure of the Buyer to obtain, maintain, or deliver policies of insurance or to pay taxes or special assessments payable by the Buyer, the Seller may:

- (a) Pay the insurance premiums, taxes or special assessments and add them to the unpaid balance on the contract, or
- (b) Pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default, or
- (c) Not pay the insurance premiums, taxes or special assessments and treat Buyer's failure to pay them as a default.

*Seller's  
Right to  
Mortgage*

9. Seller's right to place a mortgage on the Premises, or renew or amend any existing mortgage, is subject to the following limitations:

- (a) The aggregate amount due on all outstanding mortgages shall not, at any time, be greater than the unpaid principal of this Contract;
- (b) The aggregate payments of principal and interest required in any one year under the original or renewal mortgage or mortgages shall not exceed those required under this Contract;
- (c) The mortgage or mortgages shall not be amended to extend the term beyond the length of this Contract;
- (d) The Seller shall give to the Buyer written notice of the execution of any mortgage or renewal, containing the name and address of the mortgagee, the amount and rate of interest on the mortgage, the due date of payments and maturity of the principal;
- (e) The Seller covenants to meet the payments of principal and interest as they mature on mortgage now or hereafter placed upon the Premises and produce evidence of payment to the Buyer on demand; and
- (f) In case the Seller shall default upon any mortgage, the Buyer shall have the right to do acts or make the payments necessary to cure the default and shall be reimbursed by Seller by giving credit to apply on the payments due or to become due on this Contract.

When the Contract payments have reduced the amount due to the amount of the mortgage indebtedness, the Buyer shall be entitled to demand and receive the deed hereinafter mentioned subject to the mortgage indebtedness which the Buyer shall assume and agree to pay; provided that the mortgage by its terms does not prohibit assumption.

*Seller to  
Perform  
Prior Land  
Contract*

10. If, at the time this Contract is executed, the Seller is purchasing the Premises on a prior land contract, the Seller covenants and agrees to meet all obligations of that contract as they mature and produce evidence thereof to the Buyers on demand. If the Seller shall default on any prior land contract obligations, the Buyer may cure the default and any payments by the Buyer shall be credited on the sums first due on this Contract.

Whenever the sum due and owing on this Contract is reduced to the amount owing upon the prior land contract by which the Seller is purchasing the Premises, and if the Buyer is not in default, the Buyer shall be entitled to demand and receive an assignment of Seller's right, title, and interest in and to the prior land contract, provided that the Buyer shall assume and pay the obligations of the prior land contract, and provided further that the prior land contract does not prohibit assignment.

*Enforcement  
on Default*

11. If the Buyer shall fail to perform any of the covenants or conditions contained in this Contract on or before the date on which the performance is required, the Seller may:

- (a) give the Buyer a written notice specifying the default and informing the Buyer that if the default continues for a period of fifteen days after service of the notice that the Seller without further notice declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan; or
- (b) not declare the entire balance due and payable, and proceed according to the common law or the statutes of the State of Michigan including but not limited to the right of Seller to declare a forfeiture in consequence of the nonpayment of any money required to be paid under the Contract or any other breach of the Contract, but in the event the Seller elects to proceed under the sub-paragraph the Seller shall give the Buyer a written notice of forfeiture specifying the default which has occurred and shall give the Buyer a period of fifteen days after service of the notice of forfeiture to cure the default.

*Assignment*

12. Either party may assign, sell, or convey an interest in this contract, but shall immediately give written notice to the other party of the action, which notice shall give the name and address of the new party.

No assignment, sale, or conveyance, shall release the Buyer from obligations under the provisions of this Contract unless Seller releases the Buyer in writing.

*Buyer's  
Acceptance*

13. The Buyer acknowledges having been previously advised to request an attorney at law to examine either:

and agrees to accept as merchantable the title now disclosed thereby except: \_\_\_\_\_

**Conveyance**

14. Upon full final payment of the principal and interest of this Contract within the time and the manner required by this Contract, together with all other sums chargeable against the Buyer, and upon full performance of the covenants and agreements of the Buyer, the Seller shall convey the Premises to the Buyer or the Buyer's legal representative, successors or assigns by \_\_\_\_\_ deed, subject to easements and restrictions of record and free from all other encumbrances except those, if any, as shall have been expressly assumed by the Buyer and except those, if any, as shall have arisen through the acts of neglects of the Buyer or others holding through the Buyer. At the time of delivery of the deed the Seller will deliver all insurance policies mentioned in this Contract properly assigned by the Seller to the Buyer, and at Seller's expense either an abstract of title certified from the date of purchase under this Contract to a date within thirty (30) days of the date of the deed or, in the event a policy of title insurance has previously been furnished, then a title search to a date within thirty (30) days of the date of the deed.

**Loan of  
Papers  
Service of  
Notices**

15. Upon request, the Seller shall deliver the abstract or the policy of title insurance or binder to the Buyer for a period not exceeding thirty (30) days, for which the Buyer shall give a receipt.

16. Any and all notices or demands shall be sufficient when served as follows:

(a) By personal service on the party or to a member of the party's family or employee of suitable age and discretion with a request that the notice or demand be personally delivered to the party; or

(b) By depositing the notice or demand in the United States Post Office with postage fully prepaid by first class mail, addressed to the party at the party's last known address.

**Time of  
Essence**

17. It is expressly understood and agreed that time shall be deemed of the essence of this Contract. Failure of the Seller to exercise any right upon default of the Buyer shall not constitute a waiver of any rights and shall not prevent the Seller from exercising any of rights upon subsequent default.

**Termination**

18. The term of this Contract shall terminate upon the date the last payment is due as set forth in paragraph 2 unless it shall sooner be terminated by its terms.

**Additional  
Provisions**

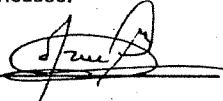
19. \_\_\_\_\_

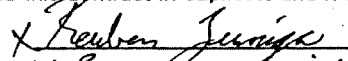
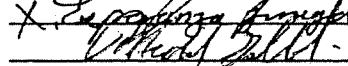
**Binding  
Effect  
Effective  
Date**

20. The covenants and agreements of this Contract shall bind the heirs, assigns, and successors of the respective parties.

21. The parties have signed this Contract in duplicate and it shall be effective as of the day and year first above written.

Witnesses:

  
Maurice Rivers

STATE OF MICHIGAN

COUNTY OF \_\_\_\_\_ s.s.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,  
a notary public in and for said County, personally appeared \_\_\_\_\_

\_\_\_\_\_, the Seller, to me known to be the same  
person described in and who executed the contract and acknowledged that \_\_\_\_\_  
executed it as \_\_\_\_\_ free act and deed.

Prepared by: \_\_\_\_\_

Notary Public, \_\_\_\_\_ County, Michigan

My commission expires: \_\_\_\_\_

**EXHIBIT 4**

**State of Michigan  
In the Circuit Court for the Ottawa County**

Juan Acosta, Reina Arriola,  
Jose and Kathy Ayila, Maria Briones,  
Fermina Hernandez, Aurora Martinez,  
Jorge Matute, Edit Mendez, Francisco  
Negrete, Manuel and Michelle Pascual,  
Salvador and Susana Ramirez, Jose  
Salinas, Yadira Sanchez, Jose and  
Consuelo Villa, Steve Zylstra  
d/b/a Zylstra Greenhouse and  
Ponderosa Nurseries

Hon. EDWARD R. POST

File No. 99- <sup>33894</sup> -NM

Plaintiffs,

v.

Alfredo Rodriguez a/k/a "Freddie"  
or Fred Rodriguez and John A. Watts,  
John A. Watts, P.C., Holland  
Law Office, an assumed name for John  
Watts and Timothy Maat, and  
Timothy M. Maat, jointly and severally,

**COMPLAINT AND  
JURY DEMAND**

Defendants.

---

Michigan Migrant Legal Assistance Project, Inc.  
Attorneys for Plaintiffs Acosta through Villa,  
By: Teresa M. Hendricks (P46500)  
Gary Gershon (P24743)  
49 Monroe Center Suite 3A  
Grand Rapids, MI 49506-2933  
(616) 454-5055

Dietrich, Zody, Howard and VanderRoest  
By: Phil Dietrich (P52928)  
Steve Bigelow (P53334)  
Attorneys for Steve Zylstra and Ponderosa  
834 King Highway #110  
Kalamazoo, MI 49001  
(616) 344-9236

---

There is no other pending or resolved civil  
action arising out of the same transaction or occurrence  
as alleged in the complaint.

## **A. INTRODUCTION**

Plaintiffs are Hispanic migrant farm workers and Michigan growers who sought legal representation from Defendant Fred Rodriguez at the Holland Law Office. The office sign in the window of Holland Law Office reads: "Asuntos legales de inmigracion," ie: Legal immigration matters. Defendant Rodriguez gained the confidence of his clientele by speaking their language and consistently representing to them that he was an attorney, specializing in immigration law. The Holland Law Office is an assumed name for the owners, John Watts and Timothy Maat, and John A. Watts, P.C.. Plaintiffs were charged thousands of dollars for immigration petitions the clients were ineligible for, work that was not performed, and work performed improperly. As a result, the plaintiffs have suffered significant loss and adverse consequences with regard to their legal statuses, emotional stress and hardship, including deportation of Plaintiff Pascual's husband to Mexico. Plaintiffs seek monetary relief for their out-of-pocket expenses and emotional distress, as well as injunctive relief for return of their client files, cessation of contact with plaintiffs and representation of them by Defendants.

## **B. ACTION**

This is an action for injunctive relief and damages.

## **C. PARTIES**

1. Defendant Fred Rodriguez conducts business in Holland, Michigan, Ottawa County, under the name of Holland Law Office and/or John A.

Watts, P.C.

2. Defendant John Watts is an attorney and owner of Holland Law Office and John A. Watts, P.C., law firms that conduct business in Holland, Michigan, Ottawa County
3. Defendant Timothy Maat is an attorney and owner of Holland Law Office and at all relevant times conducted business in Holland, Michigan, Ottawa County.
4. Defendant Alfredo Rodriguez, aka "Freddie" Rodriguez or Fred Rodriguez, hereinafter referred to as Defendant Rodriguez, acted as the agent for Holland Law Office, John A. Watts, P.C. and attorneys John Watts and Timothy Maat.
5. Holland Law Office is an assumed name of John Watts and Timothy Maat.
6. The events giving rise to this action arose in Holland, Michigan, Ottawa County.
7. Plaintiff Juan Acosta resides in Grand Rapids, Michigan, Kent County.
8. Plaintiff Reina Arriola resides in Holland, Michigan, Ottawa County.
9. Plaintiffs Jose Avila and Kathy Avila, husband and wife, are residents of Wyoming, Michigan, Kent County.
10. Plaintiff Maria Briones resides in Grand Rapids, Michigan, Kent County.
11. Plaintiff Fermina Hernandez resides in Grand Rapids, Michigan, Kent County.
12. Plaintiff Aurora Martinez resides in Muskegon, Michigan, Ottawa County.



13. Plaintiff Jorge Matute resides in Grand Rapids, Michigan, Kent County.
14. Plaintiff Edit Mendez resides in Holland, Michigan, Ottawa County.
14. Plaintiff Francisco Negrete resides in Holland, Michigan, Ottawa County.
15. Plaintiff Manuel Pascual resides in Mexico and his wife, Michelle Pascual, resides in Watervliet, Michigan, Berrien County.
16. Plaintiff Salvador Ramirez resides in Pullman, Michigan, Allegan County.
17. Plaintiff Jose Salinas and his wife, Yadira Sanchez, reside in Holland, Michigan, Ottawa County.
18. Plaintiff Jose and Consuelo Villa reside in Holland, Michigan, Ottawa County.
19. Plaintiff Ponderosa Nurseries is a nursery conducting its business in Hamilton, Michigan, Allegan County.
20. Plaintiff Steve Zylstra d/b/a Zylstra Greenhouse is a resident of and conducts business in Kalamazoo, Michigan, Kalamazoo County.
21. The amount of damages sustained by Plaintiffs exceeds \$25,000.

#### **D. FACTUAL ALLEGATIONS**

22. Except for the following individuals, all other plaintiffs have only limited English speaking skills and Defendant Rodriguez dealt with them in Spanish: Kathy Avila; Aurora Martinez; Michelle Pascual; Steve Zylstra and Kathy Battaglia of Ponderosa Nurseries.
23. The office sign in the window of the Holland Law Office indicates that Defendant Rodriguez specializes in "asuntos legales de imigracion," i.e., legal immigration matters.

24. Upon information and belief, no licensed attorney works full-time at the Holland Law Office; rather it is staffed by Fred Rodriguez and his staff.
25. Fred Rodriguez is not an attorney.
26. Fred Rodriguez is not certified by the Immigration and Naturalization Service ("INS") to represent clients for immigration matters.
27. Fred Rodriguez does not work for a non-profit corporation.

### **Plaintiff Juan Acosta**

28. Mr. Acosta went to Defendant Rodriguez at the Holland Law Office in August, 1998 to obtain a renewal of a work authorization document from the INS.
29. Mr. Acosta paid Defendant Rodriguez \$250 of Rodriguez' \$1500 charge on August 5, 1998.
30. Defendant Rodriguez represented to Mr. Ayala that he was an attorney working out of the Holland Law Office.
31. Mr. Acosta's work permit had expired on March 24, 1998.
32. Mr. Acosta was given a I688B through Special Agent Scherry E. Douglas in Los Angeles, California, sometimes referred to as a "snitch visa."
33. The "snitch visa" gave Mr. Acosta permission to remain in the United States and work until his testimony was used against an alien smuggler, pursuant to a subpoena, in Case CR 97-415-JGD, in United States District Court, Central District of California.
34. The subpoena appearance date was July 8, 1997.
35. Defendant Rodriguez represented to Mr. Acosta that he was obtaining a renewal of the "snitch visa."

36. The criminal case in California had been concluded as of July, 1997.
37. In October, 1998, Defendant Rodriguez represented to Mr. Acosta that he contacted Special Agent Douglas and that "she was willing to converse and make some adjustments."
38. Defendant Rodriguez represented to Mr. Acosta that Mr. Acosta owed his firm \$250 more dollars for making the phone calls to Agent Douglas.
39. It was not possible to obtain an extension of the "snitch visa" after July 1997.
40. Upon information and belief, Defendant Rodriguez never spoke to Special Agent Douglas in 1998.

### **Plaintiff Reina Arriola**

41. On May 30, 1998, Reina Arriola went to Defendant Rodriguez at the Holland Law Office for immigration advice.
42. Defendant Rodriguez told Ms. Arriola that he was an attorney specializing in immigration matters.
43. Ms. Arriola's brother, Jorge Arriola, is a Lawful Permanent Resident (LPR) of the United States.
44. Defendant Rodriguez told Ms. Arriola that she and her three sisters could adjust their status under the Family Unity category, using her brother, an LPR, as the petitioner.
45. This statement was incorrect.
46. Defendant Rodriguez took \$1,500 from Ms. Arriola as down payment on a \$2,000 bill for handling the family's petitions.

47. Neither Ms. Arriola nor any of her sisters has acquired lawful status as Defendant Rodriguez promised.

### **Plaintiffs Jose and Kathy Avila**

48. In August, 1997, Jose Avila went to see Defendant Rodriguez who works at the Holland Law Office.

49. Mr. Avila was led to believe that Defendant Rodriguez was an attorney practicing immigration law.

50. Defendant Rodriguez told Mr. Avila that Mr. Avila would have a work permit in four months, and he would file a petition for him as a spouse of a U.S. citizen.

51. Defendant Rodriguez charged the Avilas a total of \$3,000 for his representation.

52. The Avilas were notified by INS that they had to attend a meeting in Detroit, to which they went alone.

53. The Avilas had a second meeting in Detroit in May, 1998.

54. The Avilas could not reach Defendant Rodriguez to attend with them.

55. However, when the Avilas arrived in Detroit, Defendant Rodriguez was there and demanded \$700 to represent them at the meeting.

56. At the meeting, the INS official said he needed a criminal history record from California, where Jose Avila had previously lived.

57. Defendant Rodriguez made a note of the INS official's request and stated that he would obtain the record and submit it to INS on behalf of the Avilas.

58. Defendant Rodriguez did not obtain Jose Avila's record from California.

59. As a result of the above, the INS considered the Avila's petition abandoned.

60. Jose Avila has been denied an extension of his work permit in the United States.

61. Jose Avila's original work permit expired in February, 1999.

62. Defendant Rodriguez did not perform the work he agreed to do for the Avilas.

### **Plaintiff Maria Briones**

63. On August 9, 1998, Maria Briones hired Defendant Rodriguez of the Holland Law Office to represent her in a deportation hearing.

64. Defendant Rodriguez told her he was an attorney specializing in immigration law, stating he was "a very good attorney."

65. Defendant Rodriguez told her that he could get her permission to work and could stop the deportation proceedings.

66. Ms. Briones paid Defendant Rodriguez \$3,300.

67. On March 23, 1999, Ms. Briones had an Immigration hearing in Detroit, and expected Defendant Rodriguez to represent her there.

68. Instead, Mario Hector Cisneros appeared and said he was her attorney.

69. Ms. Briones told the judge that Mr. Cisneros was not her attorney, and that she hired Defendant Rodriguez.

70. The Immigration Judge told her that Defendant Rodriguez was not an attorney.

71. Ms. Briones had never met Mr. Cisneros and did not want his representation. The hearing was adjourned until April 27, 1999.

72. Ms. Briones had to hire another attorney.

73. Ms. Briones asked Defendant Rodriguez for an itemization of the work done and the return of the \$3,300 she paid to him.

74. Defendant Rodriguez has refused to respond.

### **Plaintiff Fermina Hernandez**

75. Fermina Hernandez went to Holland Law Office for legal immigration assistance in 1997.

76. Defendant Rodriguez told her he was an attorney specializing in immigration law.

77. Defendant Rodriguez charged Ms. Hernandez \$650 as a "retainer" to file paperwork with the INS giving her legal permission to be in the United States.

78. On a number of occasions throughout 1997, Ms. Hernandez called the Holland Law Office to ask Defendant Rodriguez about the status of her case, but he did not respond.

79. Eventually, Ms. Hernandez demanded a refund of her retainer because she believed nothing had been done for her.

80. Defendant Rodriguez refused to refund the full amount paid.

81. He reimbursed Ms. Hernandez \$300.

### **Plaintiff Aurora Martinez**

82. On June 20, 1998, Aurora Martinez paid Defendant Rodriguez \$1,500 deposit on a \$3,000 charge for work permits for two undocumented acquaintances from Mexico who were present in the United States.

83. Ms. Martinez paid the deposit to Defendant Rodriguez at the Holland Law Office in Holland, Michigan, Ottawa County.

84. On more than one occasion, Defendant Rodriguez represented to Ms. Martinez that he was an attorney practicing immigration law.
85. Defendant Rodriguez represented to Ms. Martinez that he could get the work permits with Ponderosa Nurseries as a sponsor for them.
86. Upon her information and belief, Ponderosa Nurseries paid Defendant Rodriguez \$1,250 to sponsor these individuals.
87. Defendant Rodriguez failed to obtain the work permits.
88. Defendant Rodriguez failed to notify Ms. Martinez that the individuals were not eligible for work permits.
89. Defendant Rodriguez has failed to refund the \$1,500 deposit.
90. In August, 1998, before the above occurred, Ms. Martinez hired Defendant Rodriguez to obtain a work permit for an individual living in Morelia, Michoachan, Mexico.
91. Defendant Rodriguez represented to her that he would meet the Applicant at the U.S. Consulate in Juarez, Mexico to get him across the border and then obtain a work permit for him.
92. The Applicant traveled 15 hours by bus to the U.S. Consulate in Juarez, but Defendant Rodriguez did not appear.
93. The Applicant called Aurora Martinez to find out the whereabouts of Defendant Rodriguez.
94. Aurora Martinez then called Defendant Rodriguez to find out why he was not in Juarez at the U.S. Consulate.

95. Defendant Rodriguez said he would reschedule, so the applicant made the 15-hour trip back to Michuochan.
96. Defendant Rodriguez said he rescheduled a trip to the U.S. Consulate in Juarez to September, 1998, and told Aurora Martinez the applicant should meet him at a particular hotel.
97. The Applicant called Aurora Martinez seeking to confirm that Defendant Rodriguez would be at the U.S. Consulate in Juarez this time.
98. Aurora Martinez spoke with Defendant Rodriguez at the Holland Law Office on the morning of the trip and he confirmed that he would go to Juarez that evening.
99. The Applicant called Aurora Martinez that evening and reported that Defendant Rodriguez had not appeared.
100. Aurora Martinez called Defendant Rodriguez's home telephone number and found him there.
101. Defendant Rodriguez claimed he was ill, and told Ms. Martinez to fly down to Juarez with a letter that he drafted to get the applicant across the border.
102. Aurora spent \$1,400 on plane tickets for herself and her minor daughter and flew to Juarez with the letter drafted by Defendant Rodriguez, while the Applicant waited in Juarez.
103. The letter provided no assistance in getting the Applicant across the border, and the Applicant had to take the 15-hour bus ride back to his home.



104. When Aurora Martinez confronted Defendant Rodriguez with her dissatisfaction, Defendant Rodriguez threatened to notify the Immigration and Naturalization Service about the undocumented status of these individuals.
105. Aurora Martinez consulted with a licensed attorney practicing immigration law and was advised that these individuals are not eligible to obtain work permits as was represented by Defendant Rodriguez.

**Plaintiff Jorge Matute**

106. In August and September, 1997, Jorge Matute paid Defendant Rodriguez at the Holland Law Office, John A. Watts, P.C., a total of \$1,950 for work permits for himself and his fiance, Miriam Castillo.
107. Mr. Matute and Ms. Castillo are not eligible for work permits.
108. Neither Defendant Rodriguez nor John A. Watts nor Timothy Maat has ever advised Mr. Matute or Ms. Castillo that they are not eligible for work permits.

**Plaintiff Edit Mendez**

109. In April 1997, Ms. Mendez hired Defendant Rodriguez to file a petition for her residency under the Family Unity Program. Defendant Rodriguez promised to obtain lawful status for her within three months.
110. Ms. Mendez was not eligible under the Family Unity Program.
111. Defendant Rodriguez accepted money in exchange for his filing of the forms, which he has failed to refund.
112. Ms. Mendez has not obtained lawful status.

### **Plaintiff Francisco Negrete**

113. In April, 1997, Defendant Rodriguez approached Mr. Negrete at work at Progressive Panel Systems in Holland and offered his legal services in immigration law.
114. Defendant Rodriguez told Mr. Negrete that he was an attorney and could get Mr. Negrete a work permit from the INS.
115. Defendant Rodriguez charged Mr. Negrete \$1,000 for representation, \$500 of which Mr. Negrete paid as deposit.
116. On June 24, 1997, Defendant Rodriguez provided Mr. Negrete with a letter of representation, directed to the INS.
117. The remaining balance of \$500 was paid by Mr. Negrete's employer, and was taken out of his paycheck in \$50 installments.
118. The letter of representation states to clients that one of its purposes is to "provide information regarding your immigrant status and eligibility for discretionary relief [sic]." (Exhibit I.)
119. The letter of representation does not state either Mr. Negrete's immigrant status or eligibility for discretionary relief.
120. Mr. Negrete is not eligible for a work permit or adjustment of status.
121. Defendant Rodriguez never acquired the work permit for Mr. Negrete.

### **Plaintiffs Manuel and Michelle Pascual**

122. Manuel and Michele Pascual paid Defendant Rodriguez \$500 at the Holland Law Office to file an application for a visa in 1992.
123. Defendant Rodriguez led them to believe he was an attorney.

124. Deportation proceedings were initiated against Mr. Pascual in March or April of 1995.
125. Defendant Rodriguez met the Pascuals at the Berrien County jail and demanded \$300 toward representation of Mr. Pascual.
126. Defendant Rodriguez required another \$700 to file the "necessary paperwork" and told the clients that Mr. Pascual was facing 20 years in prison.
127. Defendant Rodriguez called Mr. Pascual's brother, Ricardo, and demanded another \$500 to represent Mr. Pascual in the deportation proceeding.
128. Defendant Rodriguez represented to the Pascuals that he filed the appropriate papers to keep client from being deported and said he sent a letter to the "attorney general."
129. In 1998, Defendant Rodriguez told Mrs. Pascual that he went to Detroit to see Mr. Pascual while he was been detained.
130. This statement was false.
131. Defendant Rodriguez was not legally permitted to, and did not represent Mr. Pascual at the deportation hearing.
132. Mr. Pascual has been deported to Mexico, though he is the husband of a U.S. citizen.
132. He faces a 10-year ban from re-entry, while his wife and daughter reside in the United States.

## **Plaintiff Salvador Ramirez**

133. On August 30, 1997, Salvador and Susana Ramirez paid Defendant Rodriguez \$750 at the Holland Law Office as a deposit on \$1,500 charge to adjust his status with the INS.
133. Mr. and Mrs. Ramirez paid \$1,280 to the INS for petition fees, as instructed by Defendant Rodriguez.
134. Mr. Ramirez is now married to a U.S. citizen. He has been deported in the past.
135. Mr. Ramirez brought a form I130, (Petition for Relative or Spouse), to Defendant Rodriguez in August, 1997.
136. Defendant Rodriguez guaranteed Mr. Ramirez that his status would be adjusted in 3 months since he was married to a U.S. citizen.
137. After 3 months had passed, Mr. Ramirez began calling Defendant Rodriguez to find out the status of his petition.
138. Defendant Rodriguez told Mr. Ramirez to meet him in Detroit at the INS.
139. Nothing resulted from the trip to Detroit. Defendant Rodriguez met with his other clients.
140. The following year, Mr. Ramirez received notice to appear in Detroit at the INS on May 14, 1998.
141. Mr. Ramirez brought the notice to Defendant Rodriguez who stated he would be there to represent him in Detroit on May 14, 1998.
142. On May 13, 1998, Rodriguez's secretary called Mr. Ramirez and said Rodriguez needed an additional \$750 to represent him in Detroit.

143. Mr. Ramirez paid the \$750 at the Holland Law Office and Defendant Rodriguez again stated he would meet him in Detroit at 11:00 a.m.
144. Mr. and Mrs. Ramirez waited at the INS in Detroit from 11:00 a.m. to 3:00 p.m. for Defendant Rodriguez.
145. Defendant Rodriguez did not appear.
146. Instead, Mario Hector Cisneros showed up and introduced himself, stating that Defendant Rodriguez sent him to assist Mr. and Mrs. Ramirez.
147. Mr. Cisneros reviewed papers sent by Defendant Rodriguez and complained that Rodriguez was "worthless" because he didn't have the right paperwork.
148. Nothing resulted from the May 14, 1998 visit to the INS, though Mr. Cisneros gave his business card to the Mr. and Mrs. Ramirez.
149. Mr. and Mrs. Ramirez could not get information about their case from Defendant Rodriguez or anyone in the Holland Law Office.
150. Mr. and Mrs. Ramirez have had to hire other counsel to handle their case.

### **Plaintiffs Jose Salinas and Yadira Sanchez**

151. In 1997, Mr. Salinas and his wife, Yadira Sanchez, contacted Defendant Rodriguez for assistance in adjusting their status with INS, and paid him \$1,300.
152. Defendant Rodriguez told them he was an attorney, and gave them a business card indicating his area of practice as "Immigration Law" at John A. Watts, P.C. (Exhibit 2.)
153. Defendant Rodriguez told the clients they could obtain work permits and

- adjust their status through a crew leader who was an acquaintance of theirs.
154. This statement is incorrect.
155. Defendant Rodriguez charged an additional \$200 for letters of retention for the clients to present to the INS or U.S. Border Patrol.
156. The letters of retention state that "John Watts PC.[sic] Attorney Law Tim Maat [sic] represent Jose Salinas and Yadira Sanchez to adjust their status in Detroit, Michigan." (Exhibit 3.)
157. Neither Mr. Salinas nor Mrs. Sanchez are eligible for a work permit or adjustment of status.
158. Defendant Rodriguez has never acquired the work permits for Mr. Salinas or Mrs. Sanchez.
159. Defendant Rodriguez told the clients, throughout 1997 and 1998, that their petitions would result in their becoming "legal" if they were patient.
160. Defendant Rodriguez filed form G-28 with the INS indicating that he and Timothy Maat, of John A. Watts, P.C., represented Jose Sanchez and Yadira Sanchez. (Exhibit 4.)
161. Neither John Watts, Fred Rodriguez nor Timothy Maat ever indicated to Yadira Sanchez that they were no longer representing her.
162. Defendant John Watts stated on April 1, 1999 in a letter to Plaintiff's counsel that "Yadira Sanchez is not our client."

### **Plaintiffs Jose and Consuelo Villa**

163. In 1997, Jose and Consuelo Villa went to Defendant Rodriguez at the Holland Law Office in Holland, Michigan for immigration law advice.

164. Jose Villa's sister is a U.S. citizen.
165. Defendant Rodriguez told Jose and Consuelo Villa that he was an attorney.
166. Defendant Rodriguez told them that Jose could immediately receive a work permit upon applying for a fourth preference visa in the brother/sister category, since his sister was a citizen.
167. This statement was incorrect.
168. Defendant Rodriguez charged Jose and Consuelo \$600 for representing them.
169. Jose Consuelo never obtained a work permit.

### **Plaintiff Zylstra Greenhouse**

170. Steve Zylstra was approached by Defendant Rodriguez in 1998 for the purpose of helping him obtain workers.
171. Defendant Rodriguez represented that he worked for John A. Watts, P.C.
172. Defendant Rodriguez represented that he could obtain work permits for several of Zylstra Greenhouse's employees who were currently out of status in the United States.
173. Defendant Rodriguez represented that Steve Zylstra could sponsor his workers for work permits through the H1b visa program for foreign temporary workers.
174. That statement was incorrect.

175. Steve Zylstra paid Defendant Rodriguez's law firm approximately \$10,000 to sponsor about 20 of his workers who were already present in the United States.
176. The Immigration and Naturalization H1b program is designed to bring foreign workers to the United States temporarily, upon proof that no U.S. workers are available and qualified for the work.
177. The H1b program applies to workers who possess specialized knowledge or skill, and have at least a bachelor's degree.
178. The H1b would not apply to nursery workers such as those employed by Zylstra Greenhouse.
179. Steve Zylstra has questioned Defendant Rodriguez and Defendant John Watts regarding the status of his sponsorship during 1998.
180. Neither Defendant Rodriguez nor John Watts has kept Steve Zylstra informed about the status of his case or his lack of legal right to sponsor the workers he listed.

### **Plaintiff Ponderosa Nurseries**

181. Kathy Battaglia, of Ponderosa Nurseries, was approached by Defendant Rodriguez in 1998 about sponsoring one of their workers for a work permit.
182. The worker was a foreman who had worked for Ponderosa for three years.
183. Kathy Battaglia learned the foreman did not have legal permission to work in the United States.
184. Defendant Rodriguez represented to her that he could get the foreman permission to work.



185. Defendant Rodriguez charged Ponderosa Nurseries \$1,000 to represent them in sponsoring the foreman for a work permit from INS.
186. Defendant Rodriguez did not communicate with Kathy Battaglia or inform her of the status of her case throughout 1998.
187. Kathy Battaglia made several attempts to contact Defendant Rodriguez to inquire about the status of the case, but Defendant Rodriguez said they lost the file.
188. Defendant Rodriguez did not acquire a work permit for the foreman, and upon information and belief, the foreman was not eligible for one.

#### **D. CAUSES OF ACTION**

##### **COUNT I- LEGAL MALPRACTICE**

189. Plaintiffs incorporate by reference paragraphs 1-180 above as if fully set forth herein.
190. Defendant Attorneys John Watts and Timothy Maat, as attorneys at law, owed a duty to Plaintiffs to exercise that knowledge, skill, ability and care ordinarily possessed and exercised by attorneys licensed to practice in the State of Michigan, and further, to act in good faith and in the best interest of Plaintiffs.
191. Defendant Fred Rodriguez, as the agent paralegal of Defendant attorneys and their law firms, owed a duty to Plaintiffs to exercise that knowledge, skill, ability and care ordinarily possessed and exercised by agents of attorneys licensed to practice in the State of Michigan and, further, to act in good faith and in the best interest of the Plaintiffs.

192. Defendant law firms, Holland Law Office and John A. Watts, P.C., as a result of its relationship with its agent attorneys and their agent paralegal, owed a duty to Plaintiff to exercise that knowledge, skill, ability and care ordinarily possessed and exercised by law firms in the State of Michigan, and further, to act in good faith and in the best interests of Plaintiffs.
193. Defendants, in addition to the above general duties, owed the following duties to the Plaintiffs:
- a. To supervise non-lawyer assistants to assure the professional obligations of the lawyer are met. MRPC 5.3
  - b. To keep the clients informed as to the status of their case, including whether the lawyer has terminated representing the client. MRPC 1.4 and 1.16.
  - c. Not to charge a clearly excessive fee. MRPC 1.5
  - d. Not to enter into an agreement for a non-refundable retainer that allows the attorney to keep fees that are unearned. MRPC 1.16 and 1.5.
  - e. Not to engage in professional misconduct, or assist or induce another to do so. MRPC 8.4
  - f. Not to assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. MRPC 5.5 and MCLA 600.916.
194. The Defendants breached these duties.
195. But for, and as a direct and proximate result of, the acts and omissions of

Defendants, Plaintiffs have suffered injuries and damages, as set out in Section F, *infra*.

## **COUNT II – FRAUDULENT MISREPRESENTATION**

196. Plaintiffs incorporate by reference paragraphs 1-188 above as if fully set forth herein.

197. Defendants, by and through agents, made material representations to Plaintiffs.

198. Those representations were false.

199. Defendants knew the representations were false, and/or made the representations recklessly, without any knowledge of the truth as a positive assertion.

200. Defendants made the representations with the intention plaintiffs act on them.

201. Plaintiffs acted in reliance on the representations.

202. The plaintiffs thereby suffered injury, as set out Section F, *infra*.

## **COUNT III – INNOCENT OR NEGLIGENT MISREPRESENTATION**

203. Plaintiffs incorporate by reference paragraphs 1-188 as it fully set forth herein.

204. Defendants, by and through agents, made material representations to Plaintiffs.

205. Those representations were false.

206. Defendants should have known the representations were false.

207. Plaintiffs acted in reliance on the representations.

208. Defendants benefited financially from plaintiffs' injuries.

## COUNT IV- VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT

209. Plaintiffs incorporate by reference paragraphs 1-188 above as if fully set forth herein.

210. Defendants have violated M.C.L. Sections 445.903 Sec. 3(1) subsections (a)(e)(n)(s)(t)(u, bb-cc) as set forth below:

211. Defendant Rodriguez caused a probability of confusion regarding the certification of his services, by claiming that he was an attorney, in violation of subsection (a).

212. Defendant Rodriguez represented that his services were that of a member of the Michigan Bar Association, ie: an attorney, which affiliation he does not have, in violation of subsection (c).

213. Defendant Rodriguez represented he was an attorney, ie: that his services met the standards imposed on attorneys by the Board of Law Examiners and Committee on Character and Fitness in violation of subsection (e).

214. Defendant Rodriguez caused a probability of confusion or misunderstanding as to the plaintiffs legal rights, obligations, or remedies as a party to an immigration petition in violation of subsection (n).

215. Defendant Rodriguez failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not be reasonably known to the consumer, by indicating to Plaintiffs that they could acquire legal status they were not eligible for, in violation of subsection (s).

*AS alleged  
in "Prodr.  
Commerce"  
within the  
meaning of  
the Act.  
445.903*

216. Defendants had Plaintiff Negrete sign a fee agreement that stated: "We do not refund money." Such statement waives, or purports to waive, the right of the plaintiff to be reimbursed for any attorney fees that are unearned, in violation of subsection (t).

217. Defendants have failed to return unearned fees in violation of subsection (u).

218. Defendant Rodriguez failed to provide plaintiffs with the promised benefits in violation of subsection (z).

219. Defendant Rodriguez made misrepresentations of fact and failed to reveal facts material to the Plaintiff's ability to obtain legal status such that plaintiffs reasonably believed they were eligible for and could receive timely adjustment of their status in violation of subsections (bb) and (cc).

### **E. RELIEF**

220. Plaintiffs request the court to order the Defendants to subscribe to the following temporary injunctive relief:

- a. Return all Plaintiffs' files or copies thereof to their respective counsel;
- b. Return any fees defendant concedes are "unearned";
- c. Not communicate or have contact with clients;
- d. Not retaliate against clients in any way.

221. Plaintiffs will suffer irreparable injury if the injunction is not issued.

222. The balance of harm favors entering a preliminary and then permanent injunction against Defendants.

223. Plaintiffs would be harmed more by the absence of an injunction than the Defendants by granting the relief.
224. There will be no harm to the public interest if the injunction is granted.
225. The injunction will preserve the status quo so that a final hearing can be held without either party having been injured.
226. After hearing and/or trial on the merits, the court can make the injunction permanent.
227. Plaintiffs request that this Court enter judgment against Defendants in whatever amount in excess of \$25,000 they are found to be entitled, together with costs, interest and attorney fees, including fees under § 11 of the Michigan Consumer Protection Act, MCL 445.911(2).
228. Plaintiffs requests that this court compensate them for the following injuries caused by Defendants:
- a. They have financial loss of money paid.
  - b. They have lost the use of money that should have been returned to them.
  - c. They have had to pay fees to other attorneys in an attempt to remedy and mitigate the damages caused by the acts and omissions of Defendants.
  - d. They have paid fees to Defendants that were unearned due to their malpractice.
  - e. They have suffered stress, financial hardships, emotional pain and suffering, mental anguish, and Mrs. Pascual suffers the loss of consortium.
  - f. They have suffered the other compensable injuries and damages.

g. They have been placed in legally precarious positions based on the contacts and information provided by them to the INS.

229. Plaintiffs also request that the Court grant any and all further relief which it deems necessary to stop the practices described herein and to make the Plaintiffs whole.

Teresa M. Hendricks

Michigan Migrant Legal Assistance  
Project, Inc.

By: Teresa M. Hendricks, (P46500)  
contracted attorney

Gary Gershon (P24743)

Attorneys for Plaintiffs Acosta, Arriola, Avila,  
Briones, Hernandez, Martinez, Matute, Mendez,  
Negrete, Pascual, Ramirez, Salinas, Sanchez, Villa  
49 Monroe Center Suite 3A  
Grand Rapids, MI 49503  
(616) 454-5055

Phil Dietrich by permission TH

Dietrich, Zody, Howard and VanderRoest

By: Phil Dietrich (P52928)

Jim VanderRoest (P53334)

Attorneys for Steve Zylstra

834 King Highway #110

Kalamazoo, MI 49001

(616) 344-9236

## Jury Demand

Plaintiffs hereby demand a trial by jury.

Respectfully Submitted,

Teresa M. Hendricks

date: 6/4/99

Michigan Migrant Legal Assistance  
Project, Inc.

By: Teresa M. Hendricks, (P46500)  
contracted attorney

Gary Gershon (P24743)

Attorneys for Plaintiffs Acosta through  
Villa

49 Monroe Center Suite 3A

Grand Rapids, MI 49503

(616) 454-5055

Phil Dietrich by permission TH.

Deitrich, Zody, Howard, and VanderRoest

By: Phil Dietrich (P52928)

Steve Bigelow (P53334)

Attorneys for Zylstra and Ponderosa

834 King Highway # 110

Kalamazoo, MI 49001

(616) 344-9236



JOHN A. WARPS

TIMOTHY M. MAAT

HOLLAND LAW OFFICE

JOHN A. WARPS P.C.

ATTORNEYS AT LAW

227 W. 17TH ST.

HOLLAND, MICHIGAN 49423

(616)393-9528

FILIO RODRIGUEZ  
IMMIGRATION LAW SPECIALIST  
PARALEGAL

SANDRA REGALADO  
SECRETARY LEGAL ASSISTANT

### IMPORTANT NOTICE

Many immigrants call their attorney's letter "Permisos de Abogado" it is important that you understand that the attorney's letters are not Permisos.

These letters serve three purposes:

1. They provide a notice to immigration officers that you are represented by this attorney and that he wishes to be contacted if you have any immigration problems.
2. They provide an accurate identification of you.
3. They provide information regarding your immigrant status and eligibility for discretionary relief.

When you pay this office for an Attorney's Letter your payment is for the services which the attorney may render such as negotiating with immigration officials for discretionary relief for you, defending you at bond reduction and deportation hearings, or rendering advice on matters related to your status in the United States. These services are provided at no additional charge to you so long as they do not involve travel outside the Holland, Michigan jurisdiction of the Immigration and Naturalization Service Detroit, Michigan.

### AVISO IMPORTANTE

Muchos inmigrantes se refieren a las cartas de abogado como "Permisos de abogado". Es muy importante que entiendan que las cartas de abogado no son permisos.

Estas cartas sirven tres propósitos:

1. Proporcionar aviso a oficiales de inmigración que usted tiene representación de un abogado y que desea que se comuniquen con él si usted tiene problema de inmigración.
2. Proporcionar una identificación exacta de usted.
3. Proporcionar información relacionada con la condición del caso y elegibilidad para relevo discrecional.

Cuando usted paga en esta oficina por cartas de abogado, su pago es por los servicios que el abogado le rinde, como negociar con oficiales de inmigración para relevo discrecional para usted, defenderlo en audiencias de deportación, o rendirle consejo en asuntos relacionados con inmigración.

Estos servicios se ofrecen sin costo adicional para usted siempre y cuando no envuelva viajar fuera del Distrito de Michigan.

Recibi del Sr. Rafael Salinas  
\$20000 el dia 24 de febrero

TIMOTHY M. MAAT  
ATTORNEY AT LAW

FRED RODRIGUEZ  
IMMIGRATION LAW

JOHN A. WATTS, P.C.  
245 HUBBARD STREET  
ALLEGAN, MICHIGAN 49010

PHONE 673-4770

JOHN WATTS PC.  
ATTORNEY LAW TIM MAAT  
245 HUBBARD ST.  
ALLEGAN MI. 49010

February 24, 1997

TO:US BORDER PATROL  
TO:INS DEPARTMENT OF JUSTICE

IN RE:ADJUST STATUS

Dear Sir Madam:

Please take notice that our Law Firm has been retained by Jose Rafael Salinas Bravo and his wife Yadira Sanchez to adjust their status in Detroit Michigan. If further assistance is needed please feel free to call us.

Respectfully, Submitted



FRED RODRIGUEZ

TIMOTHY MAAT ATTY.

PS:YADIRA SANCHEZ DOB-12-26-70  
JOSE RAFAEL SALINAS DOB-10-24-68

# NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: JOSE RAFAEL SALINAS YADIRA SANCHEZ	DATE 2-3-97
	FILE No.

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

NAME JOSE RAFAEL SALINAS	<input type="checkbox"/> Petitioner <input type="checkbox"/> Beneficiary	<input checked="" type="checkbox"/> Applicant <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)	22 1/2 E 16TH HOLLAND MI 49423	
NAME YADIRA SANCHEZ	<input type="checkbox"/> Petitioner <input type="checkbox"/> Beneficiary	<input checked="" type="checkbox"/> Applicant <input type="checkbox"/>
ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)	22 1/2 E 16TH HOLLAND MI 49423	

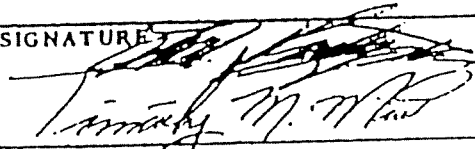
Check Applicable Item(s) below:

☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of highest court of the following State, territory, insular possession, or District of Columbia  
Tim Maat Michigan Supreme Court and am not under court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

☒ 3. I am associated with Tim Maat Attorney at Law the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)

☐ 4. Others (Explain fully):

SIGNATURE 	COMPLETE ADDRESS <u>125 Montpelier</u>
NAME (Type or Print) <u>Tim Maat</u>	TELEPHONE NUMBER <u>616-786-4880</u>

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: Tim Maat Fred Rodriguez  
 (Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:

NAME OF PERSON CONSENTING <u>Yadira Sanchez</u> <u>Jose Rafael Salinas</u>	SIGNATURE OF PERSON CONSENTING <u>Jose Rafael Salinas</u>	DATE <u>3/3/97</u>
--	--	-----------------------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

**EXHIBIT 5**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

---

Maria and Reynaldo Aguilar, Abdul  
Bahry, Irene Chacon, Maria Rios de Garcia,  
Margarita Del Real, Gustavo Duran,  
Maria and Martin Flores, Arnulfo Gomez,  
Santos and Teodora Jiminez, Osvaldo and  
Salvador Jiminez, Procoro Maldonado,  
Manuel Martinez, Maria Medrano,  
Olivia Navarro, Juan and Joel Ortiz,  
Jose and Maria Raya, Maria and  
Matias Reyna, Jose Tapia, Carmen Vargas,  
Marco Varela, Eulalia and Heron Zuniga,  
and Joel and Estella Zuniga.

Case No. *CO-37999-NM*

Hon. **EDWARD R. POST**

Plaintiffs,

v

Alfredo Rodriguez or Fred Rodriguez and  
John A. Watts, John A. Watts, P.C., Holland  
Law Office, an assumed name for John Watts  
and Timothy Maat, and Timothy M. Maat,  
jointly and severally,

Defendants.

---

Michigan Migrant Legal Assistance Project, Inc.  
By: Teresa M. Hendricks (P46500)  
Gary Gershon (P24743)  
648 Monroe Avenue NW, Suite 318  
Grand Rapids, Michigan 49503  
(616) 454-5055

---

A very similar case (Acosta, et al, vs. Rodriguez, Watts, et al (20<sup>th</sup> Circuit Court, Case  
No. 99-33894-NM) is pending in this Court before the Honorable Edward Post.

## A. INTRODUCTION

Unfortunately, this case presents more examples of the problems addressed in Acosta, et al, vs. Rodriguez, Watts, et al (20<sup>th</sup> Circuit Court, Case No. 99-33894-NM). It involves defendants who took advantage of would-be immigrants; who scrape money together in the hopes of getting the proper “papers” (documents) to feel an equal part of this county. Instead, their monies were taken and little or nothing was done in some cases. Gross mistakes were made in other cases, because the unsupervised “paralegal” carried on an immigration law practice in Holland, Michigan. The State Bar of Michigan filed suit against the paralegal for the unauthorized practice of law and obtained a Judgement against him by consent.

## B. ACTION

This is an action for injunctive relief and damages for unauthorized practice of law and malpractice.

## C. PARTIES

1. Defendant Fred Rodriguez has conducted and is believed to continue to conduct business in Holland, Michigan, Ottawa County, under the name of Holland Law Office and/or John A. Watts, P.C.
2. Defendant John Watts is an attorney and owner of Holland Law Office, a law firm which conducts business in Holland, Michigan, Ottawa County.
3. Defendant John Watts is the owner of John A. Watts, P.C., a law firm that conducts business in Allegan, Michigan, Allegan County.
4. Defendant Timothy Maat is an attorney and is (or was) an owner of Holland Law Office and at all relevant times conducted business in Holland, Michigan, Ottawa County.

5. The Holland Law Office is an assumed name of John Watts and Timothy Maat.
6. Defendant Alfredo Rodriguez, aka "Freddie" Rodriguez or Fred Rodriguez, (hereinafter referred to as Defendant Rodriguez) acted as an employee and agent for Holland Law Office, John A. Watts, P.C. and attorneys John Watts and Timothy Maat.
7. The events giving rise to this action arose in Holland, Michigan, Ottawa County.
8. Plaintiffs Maria and Reynaldo Aguilar are residents of Watervliet, Michigan, Berrien County.
9. Plaintiff Abdul Bahry resides in Kalamazoo, Michigan, Kalamazoo County.
10. Plaintiff Irene Chacon resides in Holland, Michigan, Ottawa County.
11. Plaintiff Margarita Del Real resides in Holland, Michigan, Ottawa County.
12. Plaintiff Gustavo Duran resides in Holland, Michigan, Ottawa County.
13. Plaintiffs Maria and Martin Flores are residents of Holland, Michigan, Ottawa County.
14. Plaintiff Arnulfo Gomez resides in Walker, Michigan, Kent County.
15. Plaintiffs Santos and Teodora Jiminez are residents of Grand Rapids, Michigan, Kent County.
16. Plaintiffs Osvaldo and Salvador Jiminez are residents of Holland, Michigan, Ottawa County.
17. Plaintiff Procoro Maldonado is a resident of Grand Rapids, Michigan, Kent County.
18. Plaintiff Manuel Martinez is a resident of Watervliet, Michigan, Berrien County.
19. Plaintiff Maria Medrano resides in Decatur, Michigan, Van Buren County.
20. Plaintiff Olivia Navarro resides in Muskegon, Michigan, Muskegon County.
21. Plaintiffs Juan and Joel Ortiz reside in Holland, Michigan, Ottawa County.
22. Plaintiffs Jose and Maria Raya reside in South Haven, Michigan, Van Buren County.



23. Plaintiffs Maria and Matias Reyna reside in Kalamazoo, Kalamazoo County.
24. Plaintiff Jose Tapia resides in Holland, Michigan, Ottawa County.
25. Plaintiff Carmen Vargas resides in Kalamazoo, Michigan, Kalamazoo County.
26. Plaintiff Marco Varela resides in Holland, Michigan, Ottawa County.
27. Plaintiffs Eulalia and Heron Zuniga are residents of Hartford, Michigan, Van Buren County.
28. Plaintiffs Joel and Estella Zuniga are residents of Hartford, Michigan, Van Buren County.
29. Plaintiff Maria Rios de Garcia is a resident of Grand Rapids, Michigan, Kent County.

#### **D. FACTUAL ALLEGATIONS**

30. The office sign in the window of the Holland Law Office states "asuntos legales de inmigracion," i.e., legal immigration matters.
31. Upon information and belief, no licensed attorney works full-time at the Holland Law Office; rather, it is staffed by Defendant Rodriguez and employees of Defendant Watts, the Holland Law Office, and/or Defendant Rodriguez.
32. Upon information and belief, no licensed attorney supervised Defendant Rodriguez full-time.
33. Defendants Watts and Maat were (and are) not experienced immigration lawyers.
34. Defendant Rodriguez represented to one or more Plaintiffs that he was an attorney.
35. On January 3, 2000, Ottawa County Circuit Judge Edward Post signed an injunction which prohibits Fred Rodriguez from representing to others that he is an attorney. The injunction also prohibits Fred Rodriguez from drafting legal documents for others and from adding, changing or deleting language from any documents he handles. (Copy attached as Exhibit 1).
36. Defendant Rodriguez is not an attorney.

37. Defendant Rodriguez is not certified by the Immigration and Naturalization Service (INS) to represent clients in immigration matters.
38. Defendant Rodriguez does not (and did not) work for a not-for-profit corporation at all relevant times.

Plaintiffs Maria and Reynaldo Aguilar

39. In December 1998, Mr. and Mrs. Aguilar went to the Holland Law Office, where Defendant Rodriguez represented to them that he was an attorney.
40. Defendant Rodriguez told the Aguilars that he could help them obtain work permits.
41. On December 19, 1998, Mr. Aguilar paid the Holland Law Office \$750 for a Department of Labor application. (A copy of receipt attached as Exhibit 2.)
42. Upon information and belief, Defendant Rodriguez applied for Mr. and Mrs. Aguilar under the H1-B program using ETA-750 forms.

The Aguilars are not foreign workers, (they live in the United States), nor do they possess a Bachelor of Arts or Sciences degree).

44. The Aguilars are ineligible for the H1-B program because they are not workers in a foreign country and they do not possess requirements for that program, including a Bachelor of Arts or Sciences degree.

Plaintiff Abdul Bahry

45. Prior to April 4, 1999, Mr. Bahry went to Holland to meet with Defendant Rodriguez at the Holland Law Office seeking to obtain employment authorization.

46. Mr. Bahry was told by Defendant Rodriguez that Mr. Bahry would be able to obtain an Employment Authorization Document (EAD).
47. Mr. Bahry was told that he would initially have to pay \$750 and that after the work was completed he would pay another \$750.
48. Upon request, Mr. Bahry mailed to Defendant Rodriguez a copy of his diploma, copy of his passport, INS forms I-20 and I-94, along with two immigration photos.
49. Defendant Rodriguez responded to Mr. Bahry on April 6, 1999 with a letter asking for his parents' names. (A copy of the letter attached as Exhibit 3.)
50. Mr. Bahry paid Defendant Rodriguez \$500 on April 27, 1999 in the form of a money order. On June 23, 1999 gave the Defendant a check for \$210 along with \$40 in cash. (A copy of receipt attached in Exhibit 3.)
51. In order to pay Defendant Rodriguez, Mr. Bahry sold his car.
52. In June 1999, Mr. Bahry called Defendant Rodriguez asking for his EAD, and was told to come to the Holland Law Office to receive it.
53. After traveling there on June 23, 1999 Mr. Bahry found that there was no EAD.
54. Mr. Bahry read the article in *The Grand Rapids Press* dated June 8, 1999, titled "Paralegal accused of swindling would-be immigrants." (See Exhibit 3 for a copy of the article.) Upon reading this article about Defendant Rodriguez, Mr. Bahry asked the Defendant to return the \$750.
55. On August 9, 1999 Mr. Bahry requested that Defendant Rodriguez mail him his money and the Defendant agreed.
56. Mr. Bahry did not receive the \$750.

57. On August 4, 1999, Defendant John Watts sent Mr. Bahry a letter stating that he understood that Mr. Bahry had requested a return of his money, and that Defendant Rodriguez had complied with the request, and that Mr. Bahry's case was to be closed. (See Exhibit 3 for a copy of the letter.)
58. On September 4, 1999, Mr. Bahry responded to Mr. Watts with a letter stating that he had not received his money.
59. In Mr. Watts' response dated September 21, 1999, Mr. Watts did not acknowledge that Mr. Bahry had not received the return of his money, and he informed Mr. Bahry that he was preparing a bill for services rendered. (See Exhibit 3 for copies of the letter correspondence.)
60. Mr. Bahry did not receive the services he was promised by Defendants.

Plaintiff Procoro Maldonado

61. Plaintiff Maldonado, a legal permanent resident, went to the Holland Law Office in October 1997 for immigration assistance.
62. Plaintiff had applied to adjust the status of his minor children in 1992 through the help of a non-profit organization.
63. Plaintiff went to the Holland Law Office in October, 1997 to find out the status of the applications.
64. Fred Rodriguez told him he could get "green cards" i.e. obtain legal status, for his two adult sons, Erasmo and Armando, both over 21 years old. Rodriguez collected \$1500 from Plaintiff as a deposit on a \$3,000 retainer.
65. Plaintiff's sons had a priority date of July 27, 1992.
66. Under the immigration law, because the sons were over 21 years old, their classification was that of a 2B, which meant that they could only adjust their status after an approximate eight-

year waiting period. There was no way that Rodriguez or anyone else could petition for adjustment for these sons until their priority date in 2001.

67. The Holland Law Office, through Rodriguez, charged Plaintiff \$70 for each son for an employment authorization document that could not have been obtained because there was no properly filed petition to adjust status.
68. The employment authorization documents that Rodriguez promised Plaintiff were based on having properly filed an adjustment petition for Erasmo through the immigration office in Detroit, which was impossible because no petition could be filed until the priority date in 2001.
69. The employment authorization for Plaintiff's son Erasmo was granted based on the erroneous submissions of Rodriguez, but Erasmo has been unable to renew it because there is no adjustment petition pending and no way to submit one until his visa becomes current in 2001.
70. Rodriguez also collected \$2,000 from Plaintiff Maldonado for fines to be paid to the Immigration and Naturalization Service.
71. The \$2,000 could not have been properly paid to the INS because the visa was not current, and the money would have been returned to the Holland Law Office.
72. Upon information and belief from the Immigration and Naturalization service in Detroit, the \$2,000 was never paid to the INS and no adjustment petition was filed by Rodriguez for Erasmo.
73. In March or April of 2000, Rodriguez met with Plaintiff Maldonado and told him the case would not take much longer.

74. Since that time, neither Rodriguez nor anyone from the Holland Law Office has returned his calls, made an appointment or been present for a visit to the Holland Law Office when Plaintiff attempts to contact them.
75. Defendants have failed to give and follow correct legal advice, have not informed the Plaintiff about the status of the non-existent petition, and have charged the Plaintiff for services that were not possible to render.

Plaintiff Manuel Martinez

76. In December 1998, Manuel Martinez went to the Holland Law Office to renew his work authorization.
77. Defendant Rodriguez represented to Mr. Martinez that (A) within two months he could have his work authorization renewed and (B) within three months he would be a legal permanent resident.
78. On December 18, 1998, Mr. Martinez paid the Defendant \$1250 initially, with a balance due of \$1250. (A copy of receipt attached as Exhibit 4.)
79. Mr. Martinez has not received a renewed work authorization permit, nor has his status been changed to that of legal permanent resident.
80. Mr. Martinez has not had his money refunded.
81. Defendant Fred Rodriguez has harassed Mr. Martinez on the phone for seeking legal redress against him.

Plaintiffs Jose and Maria Raya

82. Plaintiffs Mr. and Mrs. Raya went to the Holland Law Office for immigration concerns.
83. Defendant Rodriguez represented to Mr. and Mrs. Raya that he was an attorney.

84. Defendant Rodriguez assured them that he would have their "papers" in 6 months.
85. The Rayas paid Defendant Rodriguez from \$500 to \$1500.
86. Defendant Rodriguez did not obtain work permits for the Plaintiffs, Jose or Maria Raya nor has their money been returned.
87. Mr. and Mrs. Raya received no value for their monies.

Plaintiff Olivia Navarro

88. Plaintiff Olivia Navarro went to Defendant Rodriguez at the Holland Law Office for immigration advice.
89. Ms. Navarro's brother, Alvaro Gomez, is a Lawful Permanent Resident (LPR) of the United States. Mr. Gomez is the owner of the Latin American Club, a restaurant in Muskegon, Michigan.
90. Upon information and belief, Defendant Rodriguez represented to Ms. Navarro that Mr. Gomez, by filing as an employer, could petition to change her immigration status through the H2-B program for foreign workers.
91. Defendant Rodriguez directed Mr. Gomez in filing an "Application for Alien Employment Certification" (ETA-750A), stating that the Latin American Club needed a "Mexican Cook" and that he was unable to fill the job opening despite advertising in the *Muskegon Chronicle* and the *Flashes*. (See Exhibit 5 for copy of application).
92. The ETA-750A is the form required for the H2-B program. The H2-B program is intended for employers who wish to use foreign workers for temporary employment. (See Exhibit 5 for information about the H2-B program.)

93. Ms. Navarro was neither a foreign worker nor would she be a temporary employee, and thus is not eligible for the H2-B program.
94. In late 1997, Mr. Gomez and Ms. Navarro paid the Defendants \$500, and on May 30, 1998, they paid an additional \$1200.
95. Defendant Rodriguez also told Ms. Navarro he could obtain a taxpayer identification number for her so that she could work, but the number given to her by Defendant Rodriguez was not valid for work.
96. Ms. Navarro paid Defendant Rodriguez \$75 on August 15, 1998 for the taxpayer identification number.
97. Ms. Navarro paid an additional \$25 on June 10, 1999. (See Exhibit 5 for copy of receipts.)
98. Plaintiff Navarro questioned Defendant Rodriguez about her petition to change her immigration status.
99. When questioned, Defendant Rodriguez (A) threatened to call the INS to report her status, and (B) hung up on her.
100. Ms. Navarro has neither had her money returned nor received the work Defendant Rodriguez promised.

Plaintiff Maria Medrano

101. Plaintiff Medrano went to the Holland Law Office in September 1998 for help adjusting the immigration status of her family members.
102. Defendant Rodriguez assured Ms. Medrano that he could help her, and that it would cost a total of \$12,000 in payments.
103. Ms. Medrano paid Defendant Rodriguez \$125 per application for ten applications, a total of \$1,250.



104. In addition, Plaintiff Medrano paid Defendant Rodriguez and the Holland Law Office \$2000 for his services.
105. On one occasion, Defendant Rodriguez told Plaintiff Medrano that he would take her to the INS to work on adjusting her immigration concerns.
106. Ms. Medrano followed Defendant Rodriguez in his car.
107. Defendant Rodriguez drove at speeds over 75 miles per hour.
108. Defendant Rodriguez stopped once at a gas station for coffee.
109. Defendant Rodriguez hurriedly got in his car at the gas station and drove off quickly, apparently in an attempt to lose Ms. Medrano.
110. Plaintiff Medrano was unable to follow Defendant Rodriguez.
111. Plaintiff Medrano returned to the Holland Law Office, and after a short time period, Defendant Rodriguez also returned.
112. Defendant Rodriguez claimed that he had not meant to lose her, but that he had gone ahead to the INS and that "everything was great!" and he would reschedule her appointment.
113. After several months without hearing from Defendant Rodriguez, Ms. Medrano demanded her money back.
114. Plaintiff Medrano went to the bank to determine who had cashed her money orders. At the time that she got the money orders, she left the payee line blank as Defendant Rodriguez had instructed her to do, because he said he would fill it in himself. At the bank she discovered that the money orders had been cashed, but that the payee line had never been made out to the INS.

115. Upon information and belief, Defendant Rodriguez, Defendant Watts, or one of the Holland Law Office employees deposited Plaintiff Medrano's money orders for the INS into a bank account of one or more of the Defendants'.

Plaintiffs Martin and Maria Flores

116. Mr. Flores went to the Holland Law Office on December 12, 1997 to adjust the immigration status of his wife, Maria Flores, and their two children.
117. Mr. Flores believed that Defendant Rodriguez was an attorney because of the sign at the Holland Law Office that says "Oficina de ley".
118. Mr. Flores is a Lawful Permanent Resident (LPR) of the United States.
119. Mr. Flores initially paid \$900 for the three applications on December 12, 1997.
120. On September 5, 1998, Mr. Flores paid an additional \$3,000; \$1500 to Defendant Rodriguez for his services, and \$1500 to the Immigration and Naturalization Services (INS) for the application. (Copy of receipts attached as Exhibit 6.)
121. Defendant Rodriguez attempted to adjust the Plaintiffs' immigration status under the Family Unity Act.
122. The Flores' were not eligible to adjust under the Family Unity Act.
123. The INS rejected the application and returned the \$1500 immigration fee to Defendant Rodriguez.
124. The money has not been returned to the Flores family.
125. Mr. and Mrs. Flores paid a total of \$3,900 to Defendant Rodriguez and the other Defendants, who have provided inaccurate immigration assistance and not returned any of their money.

Plaintiffs Matias and Maria Reyna

126. In July 1999, the Immigration and Naturalization Service (INS) placed Maria Reyna in removal proceedings.
127. Mrs. Reyna "retained" Defendant Rodriguez for her deportation hearing.
128. Mr. Reyna is a Lawful Permanent Resident (LPR) of the United States.
129. Mr. Reyna paid Defendant Rodriguez \$1250 as a deposit against \$2500 on July 7, 1999 to file a petition for Mrs. Reyna's residency.
130. Defendant Rodriguez did not return any of the Plaintiffs calls or show up for appointments with them.
131. Plaintiffs Matias and Maria Reyna have had to seek other counsel concerning Mrs. Reyna's immigration matters.

Plaintiffs Joel Ortiz, Juan Ortiz, Irene Chacon, Marco Varela,  
Salvador Jiminez, and Osvaldo Jiminez

132. Plaintiffs Joel and Juan Ortiz, Irene Chacon, Marco Varela, and Salvador and Osvaldo Jiminez worked at JJ Finnegan's Restaurant in Holland, Michigan.
133. Upon information and belief, in July of 1997 Defendant Rodriguez visited JJ Finnegan's and told the Plaintiffs that he could assist them in acquiring work authorization permits.
134. On July 21, 1997, Joel Ortiz paid the Holland Law Office \$700 for a Department of Labor application.
135. On July 9, 1997, Juan Ortiz paid the Holland Law Office \$700 for a Department of Labor application.
136. On July 25, 1997, Irene Chacon paid the Holland Law Office \$700 for a Department of Labor application.

137. On July 25, 1997, Marco Varela paid the Holland Law Office \$700 for a Department of Labor application.
138. On July 23, 1997 Salvador Jiminez paid the Holland Law Office \$350 for a Department of Labor application.
139. On September 10, 1997, Salvador Jiminez paid the Holland Law Office the remaining \$350.
140. On July 28, 1997, Osvaldo Jiminez paid the Holland Law Office \$300.
141. On August 23, 1997, Osvaldo Jiminez paid the remaining \$400 to the Holland Law Office. (A copy of all of these receipts is in Exhibit 7.)
142. Upon information and belief, Defendant Rodriguez attempted to adjust the Plaintiffs' immigration statuses through the H2-B program. The H2-B program is intended to bring in foreign non-agricultural guest workers for jobs that are unfilled by U.S. residents.
143. As the Plaintiffs were all already living in the United States, they were not eligible for this program.
144. The Plaintiffs each paid an additional amount ranging from \$125 to \$225 for photographs, INS fees, letters of representation, and advertisements in the newspaper.

Plaintiff Margarita Del Real

145. Defendant Rodriguez went to JJ Finnegan's Restaurant in Holland, Michigan, where Plaintiff Del Real was employed.
146. Defendant Rodriguez told Ms. Del Real that it would cost her a total of \$1500 to obtain work authorization for her.
147. Ms. Del Real paid an initial \$750, and paid the remaining \$750 over time.

148. When Ms. Del Real visited the Holland Law Office to talk with Defendant Rodriguez, he assured her that her authorization would be completed soon.
149. Upon information and belief, Defendant Rodriguez attempted to obtain work authorization for Ms. Del Real through the H2-B program.
150. The H2-B program is intended to bring in foreign guest workers for jobs that are unfilled by U.S. residents.
151. As Ms. Del Real was already living in the United States, she was ineligible for this program.

Plaintiffs Santos and Teodora Jiminez

152. Plaintiff Santos Jiminez first went to the Holland Law Office for assistance in immigration matters.
153. Mr. Jiminez had an immigration hearing set for September 21, 1999.
154. Defendant Rodriguez was "representing" Mr. Jiminez.
155. On July 11, 1999, attorney Andrea Ferrara was contacted by Defendant John Watts, P.C. and asked to enter an appearance in the matter.
156. In August 1999, Ms. Ferrara and Mr. Jiminez met to discuss his case and Mr. Jiminez retained Ms. Ferrara to represent him.
157. On September 13, 1999, Defendant Rodriguez contacted Mr. Jiminez and they met at the Holland Law Office. During this meeting, Defendant Rodriguez told him that Ms. Ferrara could not help him and that he, Defendant Rodriguez, could handle the case better.
158. Defendant Rodriguez told Mr. Jiminez that it would cost him \$1700 for him to take his immigration case.
159. Mr. Jiminez paid Defendant Rodriguez \$1700.

160. Defendant Rodriguez told Mr. Jiminez to meet him at the Holland Law Office at 6:00 a.m. on September 21, 1999, so that he could drive him to Detroit for the hearing.
161. On September 21, 1999, at 6:00 a.m. Mr. Jiminez went at the Holland Law Office where he waited for one and one half-hour for Defendant Rodriguez.
162. Defendant Rodriguez never arrived.
163. As a result, Mr. Jiminez missed the hearing and the Immigration Judge entered an in absentia Order of Removal on September 21, 1999. (A copy of a letter from Ms. Ferrara is included in Exhibit 8).

Plaintiff Arnulfo Gomez

164. Mr. Gomez is a citizen of Guatemala who came to the U.S. in 1992.
165. Mr. Gomez went to Defendant Rodriguez for help with an application for asylum.
166. On November 24, 1997, Mr. Gomez paid \$800 to the Holland Law Office.
167. On December 29, 1997, Mr. Gomez paid \$100 to the Holland Law Office.
168. On March 4, 1998, Mr. Gomez paid \$905 to the Holland Law Office.
169. On August 24, 1998, Mr. Gomez paid \$700 to the Holland Law Office. (Copy of receipts attached as Exhibit 9.)
170. Despite representing to Mr. Gomez that he would attend his court hearings, on two occasions Defendant Rodriguez sent other representatives to the hearings without informing Mr. Gomez.
171. In August 1998, Juan Cisneros attended a court hearing and requested that Mr. Gomez pay him an additional fee.
172. Mr. Gomez refused to pay the additional monies.

173. On October 19, 1998, Andrea Ferrara attended Mr. Gomez's hearing per Defendant Rodriguez's request.
174. Ms. Ferrara also requested that Mr. Gomez pay.
175. Plaintiff Gomez gave her \$300. After more requests for money from Ms. Ferrara, Mr. Gomez paid her a total of approximately \$800.
176. At the hearing on October 19, 1998, Mr. Gomez's claim was denied. Ms. Ferrara offered to appeal for another \$1,000, but Mr. Gomez declined.
177. The asylum application completed by Ms. Ferrara was incomplete and partially incorrect.
178. Plaintiff Gomez has attempted to reach Defendant Rodriguez at the Holland Law Office but has been unsuccessful.

Plaintiff Jose Tapia

179. Plaintiff Jose Tapia paid Defendant Rodriguez \$900 on August 1, 1997 for a Department of Labor application.
180. On August 8, 1997, Mr. Tapia paid an additional \$100 to the Holland Law Office. On November 11, 1997, Mr. Tapia paid \$1200 to the Holland Law Office. (A copy of receipts included in Exhibit 10.)
181. At this time, Mr. Tapia was employed by Sveden House Buffet in Holland, Michigan.
182. Plaintiff Tapia went to the Holland Law Office and Defendant Rodriguez tried to adjust his status.
183. Defendant Rodriguez filed an ETA 750, a G-28, and a letter of necessity from Sveden House Buffet in order to adjust Mr. Tapia's status. Advertisements were also placed in the paper

regarding the position that Mr. Tapia filled in accordance with the process for Alien Employment Certification.

184. Mr. Tapia was not eligible for alien employment certification because he was living in the United States, among other reasons.
185. Mr. Tapia's status had not changed nor has his money been refunded by the Defendant.

Plaintiff Gustavo Duran

186. Defendant Rodriguez told Plaintiff Gustavo Duran that he could get work authorization for him through his employer, China Inn of Holland, Michigan in six months. Defendant Rodriguez also told Mr. Duran that after one year, he could have "residency papers."
187. Mr. Duran paid Defendant Rodriguez a \$750 deposit on \$1500 for the Department of Labor application. He also paid \$75 for an advertisement in the paper, and an additional \$250.
188. Upon information and belief, Mr. Rodriguez placed an advertisement in a Detroit paper for workers to work in the Holland China Inn restaurant.
189. Upon information and belief, Defendant Rodriguez intended to obtain work authorization for Mr. Duran through the H2-B program. This program brings in foreign workers for jobs unfilled by domestic workers.
190. Mr. Duran was ineligible for this program because he is not a foreign worker, rather; he is living in the United States.

Plaintiff Carmen Vargas



191. Plaintiff Carmen Vargas went to Defendant Fred Rodriguez for help acquiring her citizenship.
192. Ms. Vargas paid Defendant Rodriguez \$500.
193. She also sent in her INS forms along with a money order to the INS for \$1000.
194. The INS returned all of her papers and the \$1000 money order to her because they were lacking sufficient information.
195. Plaintiff Vargas turned over all of the papers that the INS returned to her including the \$1000 money order to the Holland Law Office.
196. Ms. Vargas made an appointment to talk with Defendant John Watts because she was becoming suspicious of Defendant Rodriguez.
- At her appointment with Defendant Watts, Ms. Vargas asked that Defendant Watts return the money she had paid to Defendant Rodriguez.
198. Defendant Watts told Ms. Vargas that he did not know where her money order was, and then a few days later called her back to tell her that he had found her money in their (Holland Law Office) account.
199. At this time, Defendant Watts told Ms. Vargas that he would return \$500 to her.
200. Soon after, Defendant Watts discovered that Ms. Vargas's citizenship application had been cleared by the INS in California (where she also applied), and refused to refund any of her money.
201. Ms. Vargas called the bank to see who had deposited the \$1000 money order for the INS and was told that they were unsure who had deposited the money but that it had not been endorsed.

202. Upon information and belief, Defendant Rodriguez, Defendant Watts, or the Holland Law Office employees deposited into their own account a money order that was to be sent to the Immigration and Naturalization Services.

Plaintiff Maria Rios de Garcia

203. Ms. Garcia went to the Holland Law Office for legal representation to adjust her status.
- Defendant Rodriguez represented to Ms. Garcia and her husband, Jose Garcia Lopez, that he was an attorney.
205. Defendant Rodriguez told Ms. Garcia he could get her work authorization while she waited to adjust her status.
206. Mr. and Mrs. Garcia paid the Holland Law Office and Defendant Rodriguez \$1035. (Copies of the receipts are attached in Exhibit 11).
207. Defendants provided no services to Plaintiffs nor refunded her money.

Plaintiffs Eulalia and Heron Zuniga

208. In May 1998, Plaintiff Eulalia Zuniga heard that Defendant Rodriguez was a "good attorney."
209. Soon after, Ms. Zuniga went to the Holland Law Office to talk with Defendant Rodriguez about adjusting her family's immigration status.
210. Plaintiff Eulalia Zuniga was attempting to adjust the status of five of her children: Monica, Maria Louisa, Esperanza, Paula, and Jorge.
211. A receipt dated September 1, 1998, shows that Ms. Zuniga's husband, Plaintiff Heron Zuniga, paid Defendant Rodriguez and/or the Holland Law Office \$2500.

212. Defendant Rodriguez informed Mrs. Zuniga that there was an additional "fine" for adjusting within the country.
213. On September 14, 1998, the Zunigas gave the Holland Law Office a money order made out to the INS for \$1,130 for Paula Zuniga's INS fine. (See Exhibit 12 for a copy of the receipt.)
214. Plaintiffs Heron and Eulalia Zuniga paid the Holland Law Office and/or Defendant Rodriguez an additional \$500 for Jorge Zuniga's INS fine.
215. Plaintiffs Heron and Eulalia Zuniga paid the Holland Law Office and/or Defendant Rodriguez an additional \$1,280 for Monica Zuniga's INS fine.
216. Plaintiffs Heron and Eulalia Zuniga paid the Holland Law Office and/or Defendant Rodriguez an additional \$1,400 for Maria Louisa Zuniga's INS fine.
217. Plaintiffs Heron and Eulalia Zuniga paid the Holland Law Office and/or Defendant Rodriguez an additional \$1,480 for Esperanza Zuniga's INS fine.
218. Upon information and belief, Maria Louisa and Esperanza Zuniga did not qualify to petition to adjust their status because their priority date is not yet current, and they have to wait to adjust their status until as late as 2004.
219. Upon information and belief, Paula, Jorge, and Monica are eligible under the Family Unity Act and do not have to pay the fine for adjusting within the country.
220. Upon information and belief, Defendant Rodriguez charged Plaintiffs Zunigas for fees which they did not need to pay, and for services he was unable to perform.

Plaintiffs Joel and Estella Zuniga

221. Plaintiff Joel Zuniga went to the Holland Law Office for assistance in petitioning to adjust the status of his wife, Estella Zuniga.

222. On February 15, 1999, Joel Zuniga paid the Holland Law Office and/or Defendant Rodriguez \$500.
223. On April 17, 1999, Joel Zuniga paid the Holland Law Office and/or Defendant Rodriguez \$1,000.
224. On May 15, 1999, Joel Zuniga paid the Holland Law Office and/or Defendant Rodriguez \$200. (See Exhibit 13 for receipts.)
225. Upon information and belief, Defendant Rodriguez had not submitted an adjustment petition on Estella Zuniga's behalf.
226. Plaintiffs Zunigas have received no value for their monies.

#### **D. CAUSES OF ACTION**

##### ***Count I*** ***Legal Malpractice***

225. Plaintiffs incorporate by reference paragraphs 1-224 above as if fully set forth herein.
226. Defendant Attorneys John Watts and Timothy Maat, as attorneys at law, owed a duty to Plaintiffs to exercise that knowledge, skill, ability and care ordinarily possessed and exercised by attorneys licensed to practice in the State of Michigan, and further, to act in good faith and in the best interest of Plaintiffs.
227. Defendant Fred Rodriguez, as the agent paralegal of Defendant attorneys and their law firms, owed a duty to Plaintiffs to exercise that knowledge, skill, ability and care ordinarily possessed and exercised by agents of attorneys licensed to practice in the State of Michigan and, further, to act in good faith and in the best interest of the Plaintiffs.

228. Defendants Watts and Maat and Defendants law firms, Holland Law Office and John A. Watts, P.C., as a result of its relationship with its agent attorneys and their agent paralegal, owed a duty to Plaintiffs to exercise the knowledge, skill, ability and care ordinarily possessed and exercised by law firms in the State of Michigan, and further, to act in good faith and in the best interests of Plaintiffs.
229. Defendants, in addition to the above general duties, owed the following duties to the Plaintiffs:
- a. To supervise non-lawyer assistants to assure the professional obligations of the lawyer are met. MRPC 5.3
  - b. To keep the clients informed as to the status of their case, including whether the lawyer has terminated representing the client. MRPC 1.4 and 1.16.
  - c. Not to charge a clearly excessive fee. MRPC 1.5
  - d. Not to enter into an agreement for a non-refundable retainer that allows the attorney to keep fees that are unearned. MRPC 1.5.
  - e. Not to engage in professional misconduct, or assist or induce another to do so. MRPC 8.4.
  - f. Not to assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. MRPC 5.5 and MCLA 600.916.
  - g. Not to tell clients they are eligible for immigration relief, when they are not.
  - h. Not to charge clients for immigration relief for which they are not eligible.
230. The Defendants breached these duties.

231. But for, and as a direct and proximate result of, the acts and omissions of Defendants, Plaintiffs have suffered injuries and damages, as set out in Section F, infra.

***Count II***  
***Fraudulent Misrepresentation***

232. Plaintiffs incorporate by reference paragraphs 1-224 above as if fully set forth herein.
233. Defendants, by and through agents, made material representations to Plaintiffs.
234. Those representations were false.
235. Defendants knew the representations were false, and/or made the representations recklessly, without any knowledge of the truth as a positive assertion.
236. Defendants made the representations with the intention that Plaintiffs would act on them.
237. Plaintiffs acted in reliance on the representations.
238. The Plaintiffs thereby suffered injury, as set out in Section F, infra.

***Count III***  
***Innocent or Negligent Misrepresentation***

239. Plaintiffs incorporate by reference paragraphs 1-224 above as if fully set forth herein.
240. Defendants, by and through agents, made material representations to Plaintiffs.
241. Those representations were false.
242. Defendants should have known the representations were false.
243. Plaintiffs acted in reliance on the representations.
244. Defendants benefitted financially from Plaintiffs' injuries.

*Count IV*  
*Violations of the Michigan Consumer Protection Act*

245. Plaintiffs incorporate by reference paragraphs 1-224 above as if fully set forth herein.
246. Defendants engaged in “trade or commerce” within the meaning of the Act., MCC Sec. 445.902.
247. Defendants have violated M.C.L. Sections 445.903 Sec. 3(1) subsections (a)(e)(n)(s)(u, bb—cc) as set forth below:
248. Defendant Rodriguez caused a probability of confusion regarding the certification of his services, by claiming at times that he was an attorney, in violation of subsection (a).
249. Defendant Rodriguez at times represented that his services were that of a member of the Michigan Bar Association, i.e.: an attorney, which affiliation he does not have, in violation of subsection (c).
250. Defendant Rodriguez at times represented that he was an attorney, i.e.: that his services met the standards imposed on attorneys by the Board of Law Examiners and Committee on Character and Fitness in violation of subsection (e).
251. Defendant Rodriguez caused a probability of confusion or misunderstanding as to the Plaintiffs legal rights, obligations, or remedies as a party to an immigration petition in violation of subsection (n).
252. Defendant Rodriguez failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not be reasonably known to the consumer, by indicating to Plaintiffs that they could acquire legal status for which they were ineligible, in violation of subsection (s).
253. Defendants have failed to return unearned fees in violation of subsection (u).

254. Defendant Rodriguez failed to provide plaintiffs with the promised benefits in violation of subsection (z).
255. Defendant Rodriguez made misrepresentations of fact and failed to reveal facts material to the Plaintiffs ability to obtain legal status such that Plaintiffs reasonably believed they were eligible for and could receive timely adjustment of their immigration status in violation of subsections (bb) and (cc).

#### **F. RELIEF**

256. Plaintiffs request the court to order the Defendants to subscribe to the following temporary injunctive relief:
- a. Return all Plaintiffs' files or copies thereof to their counsel;
  - b. return any fees Defendant concedes are "unearned";
  - c. not communicate or have contact with Plaintiffs,
  - d. not retaliate against Plaintiffs in any way.
257. Plaintiffs will suffer irreparable injury if the injunction is not issued.
258. The balance of harm favors entering a preliminary and then permanent injunction against Defendants.
259. Plaintiffs would be harmed more by the absence of an injunction than the Defendants by granting the relief.
260. There will be no harm to the public interest if the injunction is granted.
261. The injunction will preserve the status quo so that a final hearing can be held without either party having been injured.
262. After hearing and/or trial on the merits, the court can make the injunction permanent.



263. Plaintiffs request that this Court enter judgement against Defendants in whatever amount in excess of \$25,000 they are found to be entitled, together with costs, interest and attorney fees, including fees under §11 of the Michigan Consumer Protection Act, MCL 445.911 (2).
264. Plaintiffs request that this court compensate them for the following injuries caused by Defendants:
- a. financial loss of money paid
  - b. loss of the use of money that should have been returned to them.
  - c. payment of fees to other attorneys in an attempt to remedy and mitigate the damages caused by acts and omissions of Defendants.
  - d. fees paid to Defendants that were unearned due to their malpractice.
  - e. other compensable injuries and damages.
265. Plaintiffs also request that the Court grant any and all further relief which it deems necessary to stop the practices described herein and to make the Plaintiffs whole.

Respectfully submitted,

Date: 8/31/00

  
Michigan Migrant Legal  
Assistance Project, Inc.  
By: Teresa M. Hendricks (P46500)  
Gary Gershon (P24743)  
648 Monroe Ave NW, Suite 318  
Grand Rapids, MI 49503  
(616) 454-5055

**EXHIBIT 6**

[Home](#)

## Immigration Consultant Fraud

### Introduction

The number of scam artists preying upon immigrants seeking assistance in obtaining legal residence, work authorization, or citizenship has risen dramatically in recent years. Many unscrupulous consultants claim that they are attorneys or that they have close connections to the Immigration and Naturalization Service (INS). Others use titles such as notary public or notario to deceive people into believing that they are lawyers. In many Spanish-speaking countries, a notario is an attorney, often possessing more credentials than other lawyers.

In many areas, honest and responsible immigration consultants provide a real service. Unfortunately, there are almost always dishonest consultants, and frequently dishonest attorneys as well. Victims of these scams not only lose large sums of money but also are likely to suffer serious harm to their immigration status.

There are a number of reasons why immigrants are targeted. Many new immigrants feel a sense of desperation about their immigration status. Their dreams of permanent residency in the United States often lead them to believe the outrageous claims of unscrupulous consultants. The problem is compounded by the lack of affordable legal services nationwide. To make matters worse, many legal aid offices are barred from helping certain

### Proposed Legislation

U.S. Representative Luis V. Guitierrez (D-III) re-introduced legislation on February 14, 2001 in the U.S. House of Representatives designed to combat fraud committed by immigration consultants. The legislation calls for the prosecution of individuals who make false claims of assistance or knowingly attempt to defraud immigrants. ([www.house.gov/gutierrez/press021401.html](http://www.house.gov/gutierrez/press021401.html))

In September 2000, U.S. Senator Charles Schumer (D-NY) introduced the Immigrants' Protection Act. This legislation would make defrauding legal and undocumented immigrants a federal crime and establish task forces nationwide to investigate and prosecute immigration abuses.

### State Statutes Prohibiting Unfair and Deceptive Business Practices (UDAP)

Every state and the District of Columbia have enacted at least one statute broadly applicable to most consumer transactions, aimed at preventing consumer deception and abuse in the marketplace.

UDAP statutes may be used to challenge unfair, deceptive, or fraudulent practices. UDAP claims may also be based on unauthorized practice of law statutes, discussed below. However, in most cases it is not

categories of immigrants. The few organizations that do exist are often overwhelmed with requests for help.

### **Typical Scams**

Those seeking to adjust their legal status or obtain work authorization in the United States are often bewildered by the complex immigration laws in this country. Frequent changes and adjustments in these programs make understanding immigration law even more difficult. Unscrupulous immigration consultants take advantage of these circumstances in many different ways.

Typical scams include:

- Charging exorbitant fees for immigration services and then failing to file any documents
- Filing false asylum claims on behalf of victims who do not speak or read English and have no idea what the application contains
- Charging fees to prepare applications for nonexistent immigration programs or for legitimate programs for which the client does not qualify, such as asylum or labor certification.

### **Recent Cases and Developments**

- The San Diego County District Attorney charged an immigration consultant with 13 counts of grand theft, forgery, and immigration consultant fraud. Among other complaints, the consultant allegedly filled out forms and took money, but never filed anything with INS. The consultant also claimed he was an attorney and immigration employee who was a friend of former U.S. Attorney

necessary for the UDAP action to be based on a violation of another statute. For a list of state UDAP statutes and more information about these powerful tools, see National Consumer Law Center, Unfair and Deceptive Acts and Practices. ([NCLC publications](#))

### **State Statutes Prohibiting the Unauthorized Practice of Law**

State laws governing the unauthorized practice of law may also be utilized, either through public agency enforcement or in some instances by private lawsuits.

In most states, nonattorneys are prohibited from practicing law. The definition of practice of law varies, but in most cases nonattorneys are allowed to make legal forms available to consumers and to complete these forms at the direction of the consumer. They are not, however, permitted to give legal advice pertaining to the particular facts of an individual's case. For example, they cannot advise a particular immigrant that filing asylum is the best way for that person to obtain legal status.

In most states, an unauthorized practice of law (UPL) violation does not give rise to a private right of action. However, private individuals may be able to utilize state UDAP statutes in order to obtain civil remedies. In addition, most UPL statutes provide for criminal penalties. The American Bar Association publishes a summary of UPL statutes and case law and other information on this topic. ([www.abanet.org](http://www.abanet.org))

### **State Contract Translation Statutes**

A few states require businesses to give consumers translations of contracts if they negotiate (or in some cases

General Janet Reno.  
[www.thesandiegochannel.com/sand/troubleshooter/stories/troubleshooter-960020010204-230243.html](http://www.thesandiegochannel.com/sand/troubleshooter/stories/troubleshooter-960020010204-230243.html))

- Sacramento Immigration Consultant Arrested
- The District Attorney in Los Angeles on March 20, 2001 announced an immigration fraud sweep. ([da.co.la.ca.us/mr/2001/032001a.htm](http://da.co.la.ca.us/mr/2001/032001a.htm))
- In February 2001, Chicago Mayor Richard M. Daley warned Chicago's immigrants to beware of phony immigration counselors offering to help them take advantage of the new Legal Immigration and Family Equity Act (LIFE). ([www.ci.chi.il.us/Mayor/2001Press/news\\_press\\_fraud.html](http://www.ci.chi.il.us/Mayor/2001Press/news_press_fraud.html))
- The U.S. State Department has issued a warning about immigration consultants who charge exorbitant rates and make unrealistic claims about the Diversity Lottery. ([www.immigrationinternational.com/en/t\\_statedepartmentwarning.htm](http://www.immigrationinternational.com/en/t_statedepartmentwarning.htm)). The U.S. currently issues about 50,000 visas annually under what is known as the "Green Card Lottery." Except for a few countries that have a high rate of immigration to the U.S., individuals from most countries can apply for the lottery as long as they meet certain requirements. For more information about the Lottery, see ([www.immigrationinternational.com/en/t\\_greencardlottery.htm](http://www.immigrationinternational.com/en/t_greencardlottery.htm))
- In October 2000, the Massachusetts Attorney General's

advertise) in other languages. Many of these statutes provide for cancellation of the contract if the seller (or immigration consultant) fails to provide a required translation. (See Contract Translation Statutes Information)

### Other Causes of Action

In addition to UDAP and UPL statutes, many states have enacted other general consumer protection statutes that may govern practitioner activity. False advertising statutes should also be considered. In addition, common law causes of action, such as fraud and breach of contract, may be pled against unscrupulous notarios.

### To Find Out More

For a more extensive analysis of these issues, see Loonin, Michon, and Kinnecome, "Fraudulent Notarios, Document Preparers, and Other Nonattorney Service Providers: Legal remedies for a Growing Problem & quot;, 31 Clearinghouse Review 327 (November/December 1997) ([www.povertylaw.org](http://www.povertylaw.org))

The Immigrant Legal Resource Center ([www.ilrc.org](http://www.ilrc.org)) is another organization that works on immigration consultant fraud issues. Much of their work is focused on encouraging law enforcement officers to act more aggressively against unscrupulous consultants. The organization also has a project to assist immigrants bring cases against consultants in small claims court.

ILRC has a report, "Immigration Consultant Fraud: Laws and Resources" aimed at assisting District Attorneys and others to prosecute immigration consultant fraud." [www.ilrc.org/source/antifraudda.pdf](http://www.ilrc.org/source/antifraudda.pdf)

Office obtained a temporary restraining order against an immigration consultant who allegedly ignored a previous court order to stop practicing law without a license. ([www.ago.state.ma.us/diasjorg.asp](http://www.ago.state.ma.us/diasjorg.asp))

### **Legal Remedies to Challenge Immigration Consultant Fraud**

This discussion is most appropriate for attorneys and others interested in the range of legal claims available to challenge immigration consultant fraud. Information more suitable for consumers is available at "Preventing Fraud" below. Beware of Dishonest Immigration Consultants - (See pdf - version)

### **Specific Immigration Consultant Statutes**

Many states have enacted statutes regulating immigration consultants. Most of these statutes exempt accredited representatives. An accredited representative is a nonattorney working for an organization accredited by the Board of Immigration Appeals. (8C.F.R. §292.1(a)(4). Nonattorneys who work for nonprofit agencies or law school legal clinics are also generally exempt from state immigration consultant statutes. All of these state laws prohibit immigration consultants from providing legal assistance. Several specify limited services that the consultant may lawfully perform. The remedies for violations of these statutes vary from state to state. Most statutory violations constitute a misdemeanor. In some states, repeat violations raise the crime to a felony. Several of the statutes also provide a private right of action.

The following is a current list of state immigration consultant statutes:

### **Preventing Fraud**

Immigration consultant fraud occurs largely because there is a lack of affordable legal assistance in this country. As long as low-income people have difficulty accessing the legal system, there will likely be nonattorneys vying for their business. Not all immigration consultants are rip-off artists, and in some cases clients feel more comfortable doing business with them. Too often, however, the consultants lack the required skills and/or intentionally aim to rip off unsuspecting consumers.

One important solution to the problem of nonattorney scams is to continue to advocate for expansions in free or sliding scale legal services and pro bono commitments. For information about available free legal resources in immigration matters, see [www.usdoj.gov/eoir/probono/states.htm](http://www.usdoj.gov/eoir/probono/states.htm)

There are also preventative steps that clients and their advocates can take, including:

1. Contacting local and state regulatory agencies (usually bar organizations) to check whether legal providers claiming to be attorneys are in fact licensed to practice law.
2. Working with law enforcement to encourage criminal prosecution of offenders.
3. Advising clients of their rights when using nonattorney services, including:
  - In most cases, a right to receive a written contract (and in many cases three days to cancel those contracts)
  - In many cases, a right to a

Arizona: Ariz. Rev. Stat. Ann §§12-2701-12-2703

California: Cal. Bus. & Prof. Code §22440-44

Illinois: 815 Ill. Comp. Stat. 505/2AA

Minnesota: Minn. Stat. §325E.031

New Jersey: N.J. Stat. Ann. §2C:21-31

New Mexico: N.M. Stat. Ann. §§36-3-1 to 36-3-10

Washington: Wash. Rev. Code §§19.154.010 to 19.154.902

A few cities have also passed regulations or ordinances dealing with immigration consultant fraud. For example, the City of Chicago has an Immigration Assistance Ordinance. Among other provisions, this ordinance requires immigration consultants in Chicago to obtain a general business license and register with the Chicago Department of Consumer Services before accepting payment to provide immigration assistance services. ([www.ci.chi.il.us/ConsumerServices/immigration.html](http://www.ci.chi.il.us/ConsumerServices/immigration.html)).

translated copy of the contract

- In many cases, a right to a contract explicitly stating in bold letters that the provider is not an attorney.

Rights vary significantly depending on state law.

The consumer education hand-out below is written for clients. This information is adapted in part from other consumer education brochures on this topic including those prepared by Public Counsel Law Center in Los Angeles ([www.publiccounsel.org](http://www.publiccounsel.org)), The Immigrant Legal Resource Center ([www.ilrc.org](http://www.ilrc.org)), and the New York City Mayor's Office of Immigrant Affairs and Language Services. [www.ci.nyc.ny.us/html/imm/home.html](http://www.ci.nyc.ny.us/html/imm/home.html). State advocates should feel free to adapt the information below to conform to specific requirements or additional protections available in their states.

[Introduction](#) || [Target Cities](#) || [Consumer Brochures](#) || [Training Materials](#) ||  
[Upcoming Workshops](#) || [Topics of Interest](#) || [Contact](#) || [Links](#)

Copyright © 2001 National Consumer Law Center - All Rights Reserved.  
NATIONAL CONSUMER LAW CENTER

77 Summer Street, 10th Floor, Boston, MA 02110

**EXHIBIT 7**



S T A T E O F M I C H I G A N  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

\* \* \* \* \*

ROBERT OHLMAN,  
  
Plaintiff,

CASE NO. 92-76172-PS

OPINION

vs

PERFECTYPE INC.,  
et al.,

Defendants.

---

Now pending before the Court in this case, a case which is an effort to, among other things, take control of a corporation to satisfy a judgment in plaintiff's favor against one of the individual defendants, is a motion by that corporation to set aside the default judgment recently entered against it. At first glance, the apparently-dispositive cases cited by plaintiff in opposition to that motion appear to raise a most intriguing jurisprudential question: Where is this Court's fealty when confronted by appellate decisions which unquestionably misread an unambiguous statute? To the higher courts or to the Legislature? Probably, to the courts, but the answer is not obvious. First impressions can be deceiving, however. So it is with this case. It turns out that the cases cited by the plaintiff have been replaced by a court rule which has the effect of invoking other appellate decisions which require that the pending motion be granted.

Summary of Proceedings

In May, 1990, plaintiff obtained a sizeable judgment against a George Shough. After traditional collection efforts failed, plaintiff filed this action. Count I asserts that Mr. Shough is the actual, although not record, owner of PerfectType, Inc., and asks that its stock be transferred to plaintiff. Count II seeks title to Mr. Shough's residence. Count III alleges various fraudulent conveniences. Named as defendants along with the corporation and Mr. Shough are a Donald Hopkins and a Jane Ross. They are the corporation's record shareholders. The complaint alleges that they hold that stock solely to shield it from Mr. Shough's creditors. Also named as a defendant is an Uldis Felkers. He holds title to the residence sought by plaintiff. Plaintiff alleges that Mr. Shough has an equitable interest in that property.

Plaintiff filed this case on March 24, 1992. Service was achieved on defendant corporation on March 27, making its answer due no later than April 17. On May 7, no answer having been filed, a default was entered. A few days later, on May 11, an answer was filed on behalf of the corporation by defendant Hopkins, its president.<sup>1</sup> It is dated May 6. Mr. Hopkins asserts in an affidavit filed in support of the pending motion that the answer was mailed on that date. Why it took so long for that document to travel four blocks to the courthouse is unexplained,<sup>2</sup> but, there being no evidence which rebuts the alleged mailing date, this Court has no principled basis to find that the answer was not enroute to the courthouse when the default was sought and entered.

On June 9, plaintiff applied for a default judgment. One was entered the next day. A copy was mailed to PerfectType on June 11. However, nothing in the file indicates that a copy of the application for default judgment was ever served on that corporation. Even if one was served, it did not give the notice required by MCR 2.603(1)(a)(i) and (b). Notice was not given because plaintiff took the position, a position upon which he now bases his opposition to the pending motion, that the answer filed by PerfectType is a legal nullity, meaning that there was no appearance which necessitated notice.

The pending motion was filed on June 25. In support thereof, the corporation's president submitted an affidavit which denies that Mr. Shough has any interest of any kind in PerfectType. That affidavit also asserts that there is good cause to set aside the judgment because there is a reasonable excuse for the failure which created the default, i.e., having other than a lawyer answer on behalf of the corporation. Although the defaults of defendants Hopkins and Shough were also entered on May 7, neither has moved to set them aside. The file does not

---

1

Although prepared by a layman, the answer complied more fully with the applicable rule than do most answers filed by attorneys. Not only did it respond specifically to each of plaintiff's allegations as required by MCR 2.111(C), that answer explained its denial as required by MCR 2.111(D), something few lawyer-drafted answers do.

2

May 11, 1992 was a Monday, meaning that the answer might have arrived on either Saturday or Sunday, had the Clerk's Office been open, i.e., three or four days, not five days, after being mailed. However, it is still somewhat surprising that it took the answer three or four days to get from defendant corporation, which is just a few block's from the courthouse, to the Court's mailbag. However, such things do happen.

reflect that judgments have been entered against either of them, however. Defendant Ross timely answered. Defendant Felkers was not served until June 3. No answer from him is in the file, but it does not appear that a default has been entered. Accordingly, the only matter now before this Court is the corporate defendant's motion to set aside the default judgment entered against it.

### The Applicable Law Applied

Its motion is being granted because the corporate defendant has made the showings which, when made, warrant setting aside defaults and default judgments. Except when grounded on lack of personal jurisdiction, a motion to set aside either a default or a default judgment can be granted "only if good cause is shown and an affidavit of facts showing a meritorious defense is filed," MCR 2.603(D)(1). To keep the courts open by bringing pending cases to a close, default judgments are favored, but, because resolution on the merits is also strongly favored, defaults are not. What that means is that in close cases defaults are to be set aside, but default judgments are to be sustained. See Wood v DAIIE, 413 Mich 573, 586 (1982); Marposs v Autocam, 183 Mich App 166, 169 (1990), lv app den 437 Mich 869 (1990); and Levitt v Kacy Mfg Co, 142 Mich App 603, 607, 608 (1985). The pending motion is being granted because defendant corporation's entitlement to that ruling is not close, but clear.

#### (A)

Patent is movant's showing of a meritorious defense. Somewhat surprisingly, almost all reported decisions which deal with setting aside defaults and default judgments address only the "good cause" requirement. Very few have been concerned with the requirement that a meritorious defense must also be shown. Either appeals about the latter have been infrequent or few have been reported. The form of the necessary showing is set by MCR 2.603(D)(1). It requires an affidavit which competently states admissible facts with particularity. See Martin, Michigan Court Rules Practice (2d ed), Rule 2.603, p 386. However, no rule says what must be shown, just how. Fortunately, there are some cases which do. A defaulted defendant need not actually prove its defense, nor need it even establish that it will likely succeed at trial. What the defendant must do is present first-person, admissible assertions which, "if proved" at trial, establish a legally valid defense, Daugherty v Michigan (after rem), 133 Mich App 593, 600 (1984).

Defendant corporation has made the requisite showing in the requisite form. Plaintiff's case against that corporation is based exclusively on the assertion that the corporation's real owner is Mr. Shough, that the record holders of its stock are

hiding his involvement. Therefore, the affidavit submitted by the corporation's president is necessarily adequate. It is adequate in substance because it asserts unequivocally that Mr. Shough has no interest in the corporation. If that assertion is proved at trial, a complete defense has been established, making the affidavit substantively sufficient. See Deeb v Berri, 118 Mich App 556, 565 (1982). The form of the affidavit is also unquestionably sufficient because, as the corporation's president, as well as one of its two record shareholders, the affiant is a competent witness to properly deny plaintiff's allegations. He knows first-hand who owns the company.

(B)

Also firmly established by movant is "good cause" for setting aside the default judgment entered against it. "Good cause" is typically understood to relate to excuses for failing to timely answer. It is, however, more than that. "Good cause sufficient to warrant setting aside a default judgment includes: (1) a substantial defect or irregularity in the proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements that created the default, or (3) some other reason showing that manifest injustice would result if the default judgment were allowed to stand," Deeb v Berri, *supra*, at 561. See also Levitt v Kacy Mfg Co, *supra*, at 608. Defendant corporation asserts that it has demonstrated Type 2 good cause. This Court disagrees, but it is convinced that Type 1 good cause has been established with regard to the judgment, and that Type 3 has been shown with regard to the default. Type 1 may be enough. Together, Type 1 and Type 3 are clearly enough.

Plaintiff asserts that no answer was ever filed, even though the corporation's president submitted a document in the form of an answer. Plaintiff bases that assertion on his counsel's understanding that in Michigan corporations cannot appear in pro per in litigation, but can appear only by an attorney. From that proscription he argues that what defendant corporation filed by its president was a legal nullity, meaning that nothing had been filed, so that no notice was required to defendant corporation of plaintiff's request for a default judgment. Defendant corporation counters that its agent was unaware of that prohibition, an ignorance which it argues is Type 2 good cause.

This Court readily accepts the assertion that the corporation's principals, in particular, its president who answered on its behalf, were unaware of the prohibition on corporate in pro per appearances. This Court also readily accepts the claim that that ignorance was reasonable. The

Supreme Court decision which announced the prohibition is obtuse<sup>3</sup> and announced a rule which appears to make little sense. Accordingly, being ignorant of it is not unreasonable, not, at least, for a layperson. Nonetheless, Type 2 good cause has not been shown because that ignorance is not what created the default. A default was entered in this case because no response of any kind had been filed. Defendant's answer was mailed on May 6, or, at least, there is no evidence to prove otherwise, but it was not received by the Court until May 11. A default had been entered on May 7. Had defendant corporation's in pro per answer been filed in advance of the default's entry, but ignored as inappropriate, a much different question would be presented. Type 2 good cause would probably be established, but that is not what happened.

Once a default has been entered, a default judgment may be entered in two ways. In limited circumstances and when a party has been defaulted for failing to even appear, the Clerk may sign and enter a judgment upon presentation, MCR 2.603(B)(2). In all cases where the defaulted party "has appeared," there must be written notice to that party of the application for a judgment, and that notice must be given at least 7 days before the judgment is entered. Failure to give it "constitutes a denial of due process" which is such a substantial irregularity in the proceedings that setting aside the judgment is required. See Ragnone v Wirsing, 141 Mich App 263, 265 (1985); and Deeb v Berri, supra, at 563. That is what happened in this case. Defendant corporation did "appear" long before plaintiff applied for a defaulted judgment, but was not given notice of that application.

Because it was untimely, what defendant corporation filed did not stave off entry of a default, but it did constitute an appearance which required advance notice of the application for entry of a default judgment. To "appear" as that term is used in the rules regulating default proceedings is to do "any act" acknowledging a court's jurisdiction or invoking action by it,

---

3

In Detroit Bar Association v Union Guardian Trust Company, 282 Mich 216 (1937), the Supreme Court appears to have held that a corporation may not appear in court to litigate matters on behalf of others, but may handle its own business. However, in a subsequent opinion which reiterates a denial of rehearing from the just-stated decision, the Court says, as discussed more fully elsewhere in this opinion that a corporation "can appear only by [an] attorney regardless if it is interested in its own corporate capacity or in a fiduciary capacity," 282 Mich 706, 711 (1938). Apparently, therefore, a decision which refused to change an earlier decision did actually change it. It is hard enough for lawyers to understand what the Supreme Court was doing. It has to be impossible for a layperson.

Ragnone v Wirsing, supra, at 265; and Deeb v Berri, supra, at 563-564. "Any act" by a party is sufficient to constitute an appearance if it reveals knowledge of the pending proceeding and bespeaks an intention to appear in it, Id., at 564. What defendant corporation did in this case clearly satisfied both of those requirements. Accordingly, that corporation was entitled to notice that a judgment was being requested, making the lack of notice a substantial defect in the proceedings which warrants setting aside the default judgment.<sup>4</sup>

Plaintiff attempts to avoid the consequences of not giving notice by claiming that he did not have to. Specifically, plaintiff contends that what defendant corporation filed did not constitute an appearance because it was a legal nullity. Admittedly, in Detroit Bar Assn v Guardian Trust Co, 282 Mich 707, 711 (1938), the Supreme Court said that, and in Peters v Desnick, 171 Mich App 283, 287 (1988), based on the earlier decision, the Court of Appeals held that "[w]hile an individual may appear in propria personam; a corporation, however, can appear only by [an] attorney regardless of whether it is interested in its own corporate capacity or in a judiciary capacity."<sup>5</sup> If those cases used the word "appear" in the sense that it is used in the rules regarding default proceedings, and

---

4

Had defendant corporation's "appearance" not been made before plaintiff filed his application for a default judgment, no notice would have been required. However, since an appearance was entered in this case before the application was filed, even though it was entered after the default was obtained, the due process considerations implicated by the notice requirement are fully involved, leading to the conclusion that notice was required. Had the other situation been presented, i.e., the filing of an appearance after both the default had been entered and a default judgment had been requested, but before the latter was entered, a much different case would be presented.

5

This Court's choice of words, "said" with regard to Detroit Bar Association, and "held" with regard to Peters, is deliberate. The statement in the former was dictum, not a holding. The parties had conceded the predicate point, making it unnecessary to decide the point. Points conceded on appeal are not precedent, Stone v Fox Mach Co, 145 Mich 689, 693-694 (1906). On the other hand, in Peters the Court of Appeals took action based upon its statement of the law with regard to corporate appearances, meaning that that statement was a holding. It turns out that the distinction is of no consequence in this case, but it is a distinction worth noting. It is of no here(?) consequence because a Court of Appeals holding woven out of Supreme Court dictum, is in the end, a holding binding on the trial courts.

were those cases still viable statements of the law, plaintiff would be correct, and the judgment in this case might be left standing. However, neither is the case.

Words, whether they appear in contracts, statutes, appellate decisions, or elsewhere, must be interpreted in context. A word can have different meanings depending upon context. Both Detroit Bar Assn and Peters involved something far more than a corporation appearing in an action for the limited purpose of being entitled to notice of an application for a default judgment. Both of those cases were concerned with corporations actively conducting litigation. At issue in Detroit Bar Assn were trust companies filing and processing "petitions, orders, et cetera," in Probate Court, 282 Mich at 711. In Peters, a corporation's principal had defended an action at trial and on appeal. Therefore, to say that those corporations could "appear only by [an] attorney" says only that they could not actively conduct litigation, not that they could not have done what little constitutes an appearance requiring advance notice of a default judgment. The latter does not follow from the former because the considerations, whatever they were, which gave rise to the decisions in the Detroit Bar Assn and Peters are not implicated. What a court says "should not be interpreted as going beyond the scope of the matters before the court for adjudication," Howard Pore, Inc v Commissioner of Revenue, 322 Mich 49, 72 (1948).

Additionally, plaintiff's reliance on Detroit Bar Assn and Peters is misplaced because the rule announced in those cases has been replaced by a court rule. With the adoption in 1985 of the Michigan Court Rules, this State acquired, for the very first time, a rule dealing with appearances. That rule makes no distinction between individuals and corporations. It says simply that "a party" may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose, MCR 2.117(A)(1), or that "[a]n attorney may appear by an act indicating that the attorney represents a party in the action," MCR 2.117(B)(1). Because a court rule is a decision by our Supreme Court, a rule contrary to a earlier decision overrules that decision just as would a new opinion, Riber v Morris, 279 Mich 344, 347 (1937). In other words, Detroit Bar Assn no longer states the law. Now, "a party," any party, can appear in pro per. The decision in Peters, although it comes some years after adoption of the new court rules, does not require a different decision by this Court because the new rule which this Court finds dispositive of plaintiff's position was not addressed by the Court of Appeals. An appellate decision is not precedent for an unaddressed point, McMeekin v Saginaw Probate Judge, 150 Mich 354, 357 (1907).

That Detroit Bar Assn purported to implement a statutory prohibition on corporate appearances in litigation does not mean that that case remains the law because the statute remains on the

books, which it does.<sup>6</sup> True, it is, as a general rule, the role of the courts to implement the legislative will, not change it or ignore it. Not even that bedrock principle is absolute, however. In this State, there are, by constitutional dictate, some circumstances in which the courts have power to supercede legislation. The people of this State have chosen to commit "exclusively" to the Supreme Court the function of enacting rules of practice and procedure. With that function, the Legislature "may not meddle or interfere save as the Court may acquiesce and adopt for retention at judicial will," Perin v Peuler (on reh), 373 Mich 531, 541 (1964). If a statute conflicts with a court rule, the rule prevails over the statute, Perin v Peuler, *supra*, at 540-543; and Mumaw v Mumaw, 124 Mich App 114, 120-121 (1983). The Legislature can adopt rules of procedure, but those rules remain in effect only until the Supreme Court adopts a contrary rule. That is what has happened with regard to corporate appearances in lawsuits.

(C)

In both Ragnone and Deeb, the Court of Appeals, upon concluding that the defaulted defendant had not been provided the required notice of the plaintiff's applications for entry of default judgment, not only vacated the judgments, but remanded for trial, thereby giving the clear impression that defendant corporation herein is entitled to a trial. However, it may be that the lack of notice merely justifies setting aside the

---

6

MCLA 450.681; MSA 21.311, reads now, as it read when Detroit Bar Association was decided: "It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts..." How that statute can possibly be read as precluding corporations from representing themselves is beyond this Court, frankly. Such a reading of that statute reads out of it the twice-repeated phrase "for any person other than itself." It is because the court's misreading of the statute appears to this Court to be so plain that there is raised, at first glance, anyway, the question posed in the first paragraph of this opinion.

7

Article 6, § 5 of our current Constitution, which constitution was adopted by vote of the people in 1963, declares that "[t]he supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this State..." Comparable provisions appeared in the 1850 and 1908 Constitutions of this State.



default judgment, not necessarily the underlying default. Since the failure to give notice relates exclusively to the entry of the judgment after a default has been entered, that failure does not necessarily have any effect on the default itself. This Court can readily envision circumstances wherein there is good reason to set aside a default judgment, but no good reason to justify setting aside the underlying default. That a defaulted defendant did not get notice of an application for a judgment, thereby preventing appearing at that proceeding, does not necessarily mean that there is an adequate reason to set aside the default. It is true that the cited Court of Appeals cases did remand for trial for want of notice, but it does not appear that the issue now being discussed, i.e., the potential distinction between a default and default judgment, was considered. As previously above, an appellate decision is simply not precedent for an unaddressed point, McMeekin v Saginaw Probate Judge, supra. Therefore, Ragnone and Deeb cannot be said to hold that corporate defendant herein is entitled to a trial because it did not get notice of the application for entry of a default judgment.

If lack of notice entitles defendant corporation to a trial, nothing more need be said in light of this Court's finding that the requisite notice was not given. If, however, there need be a basis to set aside both a default and a default judgment, at least, when the basis for setting aside the judgment is unrelated to the reason why a default was entered, more need be addressed. Specifically, a defendant situated as is the corporate defendant herein must also show a substantial defect or irregularity in the proceedings upon which the default, not the default judgment was based, or a reasonable excuse for failure to comply with the requirements that created the default, not the default judgment, or some other reason showing that manifest injustice would result if the default were not set aside.

This particular case is being set for trial because this Court is convinced that, for reasons apart from why the default judgment must be vacated, the default should also be set aside. As to the default, Type 3 good cause has been shown. When the delay in answering is short, e.g., a few weeks or a month, when a motion challenging the default is filed promptly, and when the defendant demonstrates a meritorious defense, especially, when the action seeks a substantial amount of money or other very significant relief, there exists "some other reason showing that manifest injustice would result from permitting the default to stand," even in the absence of any substantial defect or irregularity in the proceedings or any reasonable excuse for the failure to answer, Komejan v Suburban Softball, Inc, 179 Mich App 41, 51 (1989); and Daugherty v Michigan, supra, at 598-599. See also Bednarsh v Winshall, 364 Mich 113 (1961). That is this case.

### Conclusion

This Court has authority to condition setting aside defaults and default judgments on any terms it "deems proper," MCR 2.603(D)(4). In this case, the Court is exercising that discretion to condition setting this case for trial on the corporate defendant paying all attorney fees expended by plaintiff in the pursuit of this action against that corporation, not just the costs of the pending motion, in the event he prevails. If plaintiff proves that Mr. Shough owns PerfectType, he will have proven that the affidavit claiming a meritorious defense was perjured. If that should be proven, then, it necessarily follows that the Court was badly misused and all of the proceedings subsequent to setting aside the default judgment were totally unnecessary. This Court fully appreciates that a defendant need not win a lawsuit to demonstrate that the defense was meritorious enough to be worth the effort. Ordinarily, therefore, this Court does not condition setting aside defaults and default judgments on the defaulted party paying the other side's attorney fees if it loses. This case is different, however. Mr. Shough either is, or is not, the owner of PerfectType. His status is not a question of interpretation, fine factual analysis, or the application of difficult-to-understand rules of law. He either has engaged in the artifice alleged by plaintiff or he has not. If he has not, this case was worth pursuing. If he has, as already noted, his position thus far has been a sham. This Court should not tolerate such an abuse of process -- if it happened, which this Court is not now saying. Obviously, if PerfectType successfully defends plaintiff's claim, each side will bear their own costs.

7-17-92

Date

Attest A True Copy:



Dennis C. Kolenda, Circuit Judge

Examined, Countersigned & Entered:

S T A T E O F M I C H I G A N  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

\* \* \* \* \*

ROBERT OHLMAN,  
  
Plaintiff,

CASE NO. 92-76172-PS

SUPPLEMENTAL OPINION

vs

PERFECTYPE, INC.,  
et al.,

Defendants.

---

A few weeks ago, this Court issued an opinion in this case which, among other things, concluded that MCLA 450.681; MSA 21.311, and Detroit Bar Association v Union Guardian Trust Company, 282 Mich 216 (1937), no longer state the law. Specifically, this Court held that corporations may appear in pro per in litigation because that statute and case, which said that they could not so appear, have been superseded by a recently-enacted court rule, namely: MCR 2.117(A)(1). The point of this supplemental opinion is to identify a provision in this State's constitution which renders invalid the statute and, therefore, deprives the implementing case of precedential value.

Article 1, § 13, of the Michigan constitution declares that "[a] suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney." The word "suitor" simply means "a party to a suit at law," Webster's Ninth New Collegiate Dictionary (1989 ed), at p 1180; and Black's Law Dictionary (rev 4th ed), at p 1603. The masculine possessive pronoun "his" has traditionally been used as a shorthand for all possessive pronouns, i.e., hers and its, as well as his. In other words, the plain meaning of Section 13 is that any and all parties to a lawsuit, not merely natural persons, may represent themselves. That being the case, if the statute cited above bars corporations from representing themselves in court, it is unconstitutional. It necessarily follows that any appellate court case implementing that statute is unenforceable.

Neither the Supreme Court decision in Detroit Bar Association, nor the Court of Appeals decision in Peters v

Desnick, 171 Mich App 283, 287 (1988), preclude this Court from declaring the statute unconstitutional, even though those two decisions implemented that statute. The constitutionality of the statute was not an issue in either of those cases. Accordingly, the decisions in those cases to follow the statute do not constitute precedent for the proposition that the statute is constitutional. See Cosgrove v Wayne Circuit Judge, 144 Mich 682, 683 (1906); McMeekin v Saginaw Probate Judge, 150 Mich 354, 357 (1907); and Bostrom v Jennings, 326 Mich 146, 156-157 (1949). This Court is, therefore, free to declare the statute unconstitutional, McNitt v Citco Drilling Co, 60 Mich App 81, 84-85 (1975), aff'd 397 Mich 384 (1976).

DENNIS C. KOLENDA

8-7-92

Date

Dennis C. Kolenda, Circuit Judge

Attest A True Copy:

Debra Swanson

Examined, Countersigned & Entered:

DEBRA SWANSON

**EXHIBIT 8**

1 STATE OF MICHIGAN

2 IN THE 63RD DISTRICT COURT FOR THE COUNTY OF KENT

3 HARVEST HILL APARTMENTS,

4 Plaintiff,

5 District Court No.  
6 R-99-0743-LT

7 -v-

8 KIMBERLY HEIL,

9 Defendant.

10 LANDLORD/TENANT HEARING

11 BEFORE THE HONORABLE STEVEN R. SERVAAS, DISTRICT JUDGE

12 Rockford, Michigan - Thursday, May 6, 1999

13 APPEARANCES:

14 Appearing In Pro Per: HARVEST HILL APARTMENTS  
15 Manager: Mr. Phil Dean Hirschy

16 For the Defendant: MS. ELAINE G. STERRETT, (P-53526)  
17 89 Ionia, N.W., Suite 400  
18 Grand Rapids, Michigan 49503  
19 (616) 774-0672, Ext. 110

20 RECORDED BY: Sheila VanHoose  
21 Court Recorder, CER 5162  
22 (616) 866-1576  
23  
24  
25

TABLE OF CONTENTS

WITNESSES: COURT

Page

PHIL DEAN HIRSCHY

Direct examination by the Court

EXHIBITS:

Marked

Received

PX 1 - fax from defendant's  
former employer to  
plaintiff

10

--

PX 2 - original of lease

12

12

PX 3 - computer-generated  
financial information

26

--

PX 4 - checksheet of defendant  
with no indication of  
child support

27

--

1 Rockford, Michigan  
2 Thursday, May 6, 1999 - at 3:13 p.m.  
3 THE COURT: Ma'am, what is your name?  
4 MS. STERRETT: I'm Elaine Sterrett on behalf of  
5 Kimberly Heil, H-e-i-l.  
6 THE COURT: Okay. Your name please.  
7 MS. STERRETT: Elaine Sterrett.  
8 THE COURT: How do you spell your last name?  
9 MS. STERRETT: S-t-e-r-r-e-t-t.  
10 THE COURT: And you're representing Harvest Hill?  
11 MS. STERRETT: No. Kimberly Heil, the defendant.  
12 THE COURT: Oh, okay. Are you with Legal Aid?  
13 MS. STERRETT: Yes, I am.  
14 THE COURT: Okay. And your name, sir?  
15 MR. HIRSCHY: Phil Hirschy. Last name is H-i-r-s-c-h-  
16 Y.  
17 THE COURT: H-i-r-s-c-h-y?  
18 MR. HIRSCHY: Correct.  
19 THE COURT: Okay. Now, Ms.--I'm sorry--Ms. Sterrett,  
20 if this gets tried who's trying it?  
21 MS. STERRETT: If this gets tried it would be me.  
22 THE COURT: Okay. You're just representing-- You  
23 gave me the name of the defendant, is that right?  
24 MS. STERRETT: Yes.  
25 THE COURT: I was thinking you were here for another



1 attorney.

2 Why don't you have a seat here.

3 Ms. Heil, you've had a summary proceeding in real  
4 estate started against you. By starting that I have to  
5 tell you a couple things: One, is you have a right to have  
6 an attorney--which you have gotten here; the second is if  
7 you dispute the complaint you do have the right to have a  
8 jury trial, if you want a jury trial, if we don't get it  
9 resolved today. You have to make that demand today and pay  
10 a \$40.00 jury fee or you've waived your right to a jury.

11 Do you understand that?

12 MS. HEIL: Yes.

13 THE COURT: Okay. Mr. Hirschy, why don't you step up  
14 here, we'll swear you in, you can tell us what Harvest  
15 Hill's complaint is against Ms. Heil.

16 Will you state your full name please.

17 MR. HIRSCHY: Phil Dean Hirschy.

18 THE COURT: And would you raise your right hand. Do  
19 you solemnly swear to tell the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 MR. HIRSCHY: I do.

22 THE COURT: Have a seat right there if you would  
23 please.

24 PHIL DEAN HIRSCHY

25 called by the Court at 3:15 p.m. and sworn by the Court,

1 testified:

2 DIRECT EXAMINATION

3 BY THE COURT:

4 Q. Mr. Hirschy, what's your position with Harvest Hill  
5 Apartment?

6 A. I'm the resident manager for Harvest Hill Apartments.

7 Q. Are you familiar with the records or Ms. Heil herself?

8 A. Yes.

9 Q. Is she a resident at Harvest Hill Apartment?

10 A. Correct, she is.

11 Q. What's the address of her apartment?

12 A. 132--132 Childsdale, Apartment 112, in Rockford.

13 Q. Is this-- Is this housing subsidized?

14 A. Yes, it is.

15 Q. Okay. Is she qualified for a subsidy of some sort?

16 A. Correct.

17 Q. Um, what is your complaint against her?

18 A. On March 29-- It's non-payment of rent for the month of  
19 April.

20 Q. Okay. April of this year?

21 A. Of '99, correct.

22 Q. What is the amount in April you said she's--

23 A. The amount is--

24 Q. --supposed to pay?

25 A. Her monthly rent is \$260.00. However we had a \$50.00

1 credit. So it was \$210.00, plus a \$20.00 late fee, for a  
2 total of \$230.00.

3 Q. Okay. Um, has she been paying regularly up until--

4 A. Correct.

5 Q. What happened on this one?

6 A. On March 28 or 29 she had called me and told me that she  
7 lost her job. So that means that she has no income, so  
8 then her rent would be adjusted according to her income  
9 because it is subsidized.

10 Q. Okay.

11 A. Um, at that time I told her that I would--just because she  
12 calls me I can't do anything, I need proof. So at that  
13 time I told her I need proof from her employer that she is  
14 no longer working. Um, she gave me the fax number of her  
15 employer and on the thirtieth of March I had sent her a fax  
16 for--to verify this.

17 Q. You sent her employer a fax?

18 A. Correct.

19 Q. Okay.

20 A. At that time when I was talking to Kimberly I told her I  
21 need that by the first 'cause I have to send in the  
22 paperwork for the government for us--for us to get our  
23 money from the government. I did not receive the  
24 verification of her termination until April 2. So since it  
25 was late she would be responsible for April rent. In May

1 of 1999 she is a negative renter.

2 Q. Well, what-- I suppose, does she have any control over  
3 when the employer sends you the--

4 A. Ah, no, she does not. However, according to her  
5 termination, date of termination was February 23 of '99.  
6 So there's a month--over a month before she told me.

7 Q. Okay.

8 A. Okay.

9 Q. All right.

10 A. To us something like that, you know, based on the rent,  
11 immediately--they should have reported it immediately.

12 Q. So you're saying that it was a long time, she hadn't told  
13 you anything about it.

14 A. Correct. Prior to March 28 or 29.

15 Q. So she had paid rent in February?

16 A. Correct.

17 Q. And then just told you apparently two days before March---

18 A. I need--

19 Q. --or the April rent was due--

20 A. Correct.

21 Q. --that she was terminated? Now, could she have gone and  
22 gotten proof from the employer and brought it to you?

23 A. Yes, she could have. All I needed was something from them  
24 in writing.

25 Q. Okay.

1 THE COURT: Any questions you want to ask, ma'am?

2 MS. STERRETT: Ah, no, actually.

3 THE COURT: You may step down. Thank you.

4 THE WITNESS: Thank you.

5 (At 3:19 p.m., witness excused)

6 MS. STERRETT: Um, our first position, Your Honor, is  
7 that the complaint should be dismissed outright. I believe  
8 the Court is familiar with the Court of Appeals decision in  
9 Peters versus Desnick, which states that an individual  
10 who's not a licensed attorney cannot represent--

11 THE COURT: Judge Kolenda issued an opinion saying  
12 that--

13 MS. STERRETT: Yes, Your Honor, and it's our opinion  
14 that that opinion is incorrect. We have a statement--

15 THE COURT: Okay. I go with Judge Kolenda's opinion.

16 MS. STERRETT: Excuse me?

17 THE COURT: I go with Judge Kolenda's opinion.

18 MS. STERRETT: Okay. Ah, we have a statement from the  
19 state bar that they also believe it is correct. So I need  
20 clarification on the record that you are relying on Judge  
21 Kolenda's opinion.

22 THE COURT: I just said that.

23 MS. STERRETT: Okay. Our second position in regard to  
24 this, my client does dispute that she--it took her a--over  
25 a month to report her change in income. Apparently there's

1           been some confusion as to what her rent is.

2           THE COURT: I guess it's not-- As I understand it,  
3           it's not so much when she reports it, she has to establish  
4           it. Is that what you're saying?

5           MS. STERRETT: Her lease--

6           MR. HIRSCHY: Correct.

7           MS. STERRETT: --does not require that. Her lease  
8           requires only reporting. And the prevailing case law,  
9           which I have not been able to find any in Michigan to date,  
10          is that the Court either needs to look at when the actual  
11          loss of income occurred, which would mean that her change  
12          in rent would be retroactively effected to March 1, or they  
13          have to look at the date that she reported it. And she  
14          reported in March. She tried to report earlier in March  
15          but he refused to return her phone calls.

16          THE COURT: Well, let-- Well--

17          MS. STERRETT: The fact is is that she reported in  
18          March and therefore the change in rent should be effective  
19          April 1.

20          THE COURT: Who did she report it to?

21          MS. STERRETT: Mr. Hirschy. She left messages on his  
22          answering machine.

23          THE COURT: How does she know he got them--he got  
24          those?

25          MS. STERRETT: Well, we're presuming that if he has an

1           answering machines for his tenants to use and leave  
2           messages on that it should be in working order.

3           THE COURT: Um, you're still under oath. Did you get  
4           any reports on your answering machine before March 29 that  
5           she was claiming she lost her job?

6           MR. HIRSCHY: No, I did not.

7           MS. STERRETT: We also are prepared to obtain a  
8           witness from her employer which would state that it was  
9           before April 1 that they faxed the verification.

10          THE COURT: Isn't there-- Wouldn't there be a date on  
11          your fax?

12          MR. HIRSCHY: Yes, Your Honor. I do have--

13          THE COURT: Why don't you give that to Sheila, you can  
14          mark it and then you can show it.

15          (At 3:21 p.m., PX 1 marked for identification)

16          THE COURT: Are you saying that she doesn't have to  
17          verify anything she reports?

18          MS. STERRETT: The lease states that she is required  
19          to report, the lease does not require her to verify it. If  
20          he wants separate verification then he is responsible for  
21          finding it. And there's no reason that he can't make the  
22          effective date for this subsidy change to be retroactive,  
23          in any event.

24          THE COURT: Can you still get your money for that  
25          month if you--

1 MR. HIRSCHY: No, we cannot. The-- It's a different-  
2 This is a real development subsidy, which is different from  
3 a HUD Section 8 subsidy. Real development, everything is  
4 reported by the first of the month. So once it's been  
5 reported, if it's not reported by the first we gotta wait  
6 for another month. And they don't go backward as far as  
7 retroactive to get that subsidy.

8 THE COURT: So you're saying because of the type of  
9 subsidy, if you request retroactive rent for April based on  
10 when she lost her job, for instance, or reported to you  
11 that she lost her job, they won't reimburse you for that  
12 month?

13 MR. HIRSCHY: No.

14 THE COURT: Is there a date on there?

15 MS. STERRETT: Um, well, I'm not really clear as to  
16 what has exactly happened here. The employer's date on  
17 here when this was completed was March 30, the day that he  
18 sent it over there.

19 THE COURT: What's the date on the fax that it was  
20 sent?

21 MS. STERRETT: There's two fax dates and it's not  
22 clear to me-- There does say one that is 3-30 and there is  
23 one circled at the top of April 2. But--

24 THE COURT: Did you get anything before April 2 like  
25 that?



1 MR. HIRSCHY: No.

2 THE COURT: Can I see that please.

3 MR. HIRSCHY: I faxed that to them March 30.

4 THE COURT: Do you have a copy of your lease?

5 MR. HIRSCHY: I do not have a copy but I have the

6 original.

7 THE COURT: Okay. That's fine. Why don't you give it

8 to Sheila and she'll mark it. Any objection if that's

9 received?

10 MS. STERRETT: No, not at all.

11 THE COURT: We'll receive it.

12 (At 3:23 p.m., PX 2 marked for identification and

13 received into evidence)

14 THE COURT: This faxed copy apparently is a fax of

15 page two, is that right?

16 MR. HIRSCHY: Possibly.

17 THE COURT: Did you get two pages with this--

18 MR. HIRSCHY: The original would have been a page

19 cover sheet.

20 THE COURT: Did you get a cover sheet with it?

21 MR. HIRSCHY: Um, I don't have that in here.

22 THE COURT: 'cause on page one it just shows that top

23 of page one and that's the one that says April 2. And then

24 this page two isn't really--doesn't look like a fax time

25 and day, it just looks like there is another date on there

1 of March 30 at eleven o'clock. But it doesn't look like  
2 the type that appears at the top of the fax.

3 MR. HIRSCHY: I sent them two pages on March 30.

4 THE COURT: Okay.

5 MR. HIRSCHY: And they sent me the page--

6 THE COURT: Is this one of the pages you sent them?

7 MR. HIRSCHY: Correct.

8 THE COURT: Oh, so they--

9 MR. HIRSCHY: That's the first page.

10 THE COURT: --just filled it out and sent it out?

11 MR. HIRSCHY: Right.

12 THE COURT: So this March 30--

13 MR. HIRSCHY: The second page--

14 THE COURT: --page is the date you sent it to them?

15 MR. HIRSCHY: Yeah. That March 30, correct.

16 THE COURT: And then April 2 is the date they returned  
17 it?

18 MR. HIRSCHY: That I received it through my fax,  
19 correct.

20 THE COURT: Okay. What section of the lease are you  
21 referring to, ma'am?

22 MS. STERRETT: Um, the lease section is on page 1245.  
23 I will state that I was incorrect, it does say, "Failure to  
24 submit information necessary to certify income."

25 However, my client has never received a copy of this

1 lease and it was her understanding that she was only to  
2 report it.

3 THE COURT: What was that based on if she never read  
4 the lease? What was her understanding based on?

5 MS. STERRETT: On her subsidy requirements.

6 THE COURT: Does she have something that she read that  
7 she based that on?

8 MS. STERRETT: No, Your Honor. But apparently she did  
9 make the appropriate reporting to Mr. Hirschy. And the  
10 fact that he delayed in returning her telephone calls and--

11 THE COURT: Well, that apparently is a question of  
12 fact because he's denying that. And, um, at this point  
13 what section were you relying on, section?

14 MS. STERRETT: Under the lease. I'm sorry. That was  
15 on Page 12, Section 45.

16 THE COURT: Twelve.

17 MS. STERRETT: It does--

18 THE COURT: "Additional requirements--"

19 MS. STERRETT: No, it's not clear as to a timeline,  
20 and it certainly is not clear that she has a deadline to  
21 make any reporting.

22 THE COURT: Now, why wouldn't she have read and signed  
23 a copy of this lease?

24 MS. STERRETT: She did apparently sign it, we've got  
25 her signature on it.

1 THE COURT: Oh, okay. So--  
2 MS. STERRETT: At least the copy I have--  
3 THE COURT: Yeah.  
4 MS. STERRETT: --she did sign.  
5 THE COURT: I thought you were saying she had never  
6 seen this lease before.  
7 MS. STERRETT: No. I said she does not have a copy of  
8 it and her memory was that she was only to report.  
9 If he asked for certification--  
10 THE COURT: Did you give her a copy of this, does she  
11 get a copy of this lease?  
12 MR. HIRSCHY: I'm not sure if she did or not. I'm  
13 not--  
14 THE COURT: Do you normally give them a copy?  
15 MR. HIRSCHY: Yes.  
16 THE COURT: Are you saying you never got a copy,  
17 ma'am?  
18 MS. HEIL: I never received a copy.  
19 THE COURT: Did you ask for one?  
20 MS. HEIL: I called the corporate office in Kalamazoo  
21 and requested them as well.  
22 THE COURT: Okay. Well, we'll give you a copy of this  
23 before you leave.  
24 MS. STERRETT: I do have a copy, Your Honor.  
25 THE COURT: Okay.

1 MS. STERRETT: It was submitted with the original  
2 pleadings.

3 THE COURT: I'm not finding what I'm looking for here.  
4 It's on Page 12?

5 MS. STERRETT: Page 12.

6 THE COURT: What paragraph?

7 MS. STERRETT: Section 45. I think it's--

8 THE COURT: Section 45. I've got an A, a B, and a C.

9 MS. STERRETT: I'm sorry. Wait, I have two Page 12.

10 THE COURT: Yeah, so do I. She signed the second one.

11 MS. STERRETT: I was looking at the first one.

12 THE COURT: Yeah.

13 MS. STERRETT: The second full paragraph, "I also  
14 understand and agree. . ."

15 THE COURT: ". . . that my monthly contribution of  
16 this lease or occupancy agreement may be raised or lowered,  
17 based on changes in the household income or adjustments to  
18 income, failure to submit information necessary to certify  
19 income, changes in the number and age of persons living in  
20 the household, and on the escalation clause of--and on the  
21 escalation clause of this contract."

22 MS. STERRETT: Apparently there's something missing  
23 there, which would--

24 THE COURT: Yeah, it doesn't sound--

25 MS. STERRETT: --cause confusion by anybody.

1 THE COURT: "I also understand and agree that my  
2 monthly contribution under this lease or occupancy  
3 agreement may be raised or lowered, based on changes in the  
4 household income or adjustments to income, failure to  
5 submit information necessary to certify income, changes in  
6 the number--"

7 Yeah, it doesn't-- That doesn't make sense.

8 Did you read that?

9 MR. HIRSCHY: No, I did not.

10 THE COURT: Why don't you take a look at it, it looks  
11 like something got left out of there.

12 We've heard a number of these cases, I've never heard  
13 one where they didn't have to provide information about to  
14 substantiate what they were saying the change was.

15 MS. STERRETT: And that's fine. However, the delay in  
16 these cases our assertion was on the part of the manager  
17 for not returning her phone calls. Had she known that she  
18 needed to certify this she would have had more time. She  
19 contacted him within a couple of weeks.

20 THE COURT: But she signed a lease.

21 MS. STERRETT: She did sign the lease.

22 THE COURT: And doesn't the lease--

23 MS. STERRETT: And the lease is not clear that she has  
24 a deadline of when she reports. And there's also nothing  
25 in this lease that I have been able to find that says that

1           there can't be a retroactive modification.   If it just  
2           took--

3           THE COURT:   A lease part of it I'm not sure is the  
4           part that would dictate whether they'll do it or not do it.  
5           The lease is--

6           MS. STERRETT:   Well, in that case--

7           THE COURT:   --a contract between these two, not so  
8           much the provider is it?

9           MS. STERRETT:   It is a contract between these two,  
10          apparently no one from the provider did sign that.   That  
11          would obviously be something that I would look for in  
12          discovery--

13          THE COURT:   Well--

14          MS. STERRETT:   --to get their policy.

15          THE COURT:   --actually you have--   Um, who can she  
16          call to see whether there's a possibility of some sort of  
17          retroactive payment to you of when based on the fact that  
18          she was terminated?

19          MR. HIRSCHY:   Well--

20          THE COURT:   You say it can't be done and she wants to  
21          check that out, who would she--

22          MR. HIRSCHY:   That is World Development.

23          THE COURT:   Do you have a number?

24          MR. HIRSCHY:   I've got one but it's at my office.

25          MS. STERRETT:   Where's World Development located?

1           MR. HIRSCHY: Ah, Grand Rapids, Eagle Park Drive,  
2           3260.

3           THE COURT: Can you call your office when we're done  
4           here and get the number for her?

5           MR. HIRSCHY: I don't have anybody there, I'm the only  
6           one in the office.

7           THE COURT: Okay.

8           MS. STERRETT: I gave him a copy of my appearance so  
9           he does have my number.

10          THE COURT: Okay. Well, I, um, there are a couple  
11          things that bother me. One is the fact that you leave it  
12          on an answering device. I'm not for sure it's gonna  
13          qualify as notifying. If, you know, I'm not sure what his  
14          duty is to return it. If in fact she doesn't get a return  
15          phone call I suppose she can always go in person if she's--  
16          if she has done this when she contends or send him a letter  
17          or some other way to prove that she did it and that in fact  
18          it was received, where you get a return receipt or  
19          something to indicate they got it. Here, he's disputing  
20          that it was on the answering machine and it's gonna be  
21          impossible for anybody to really, you know, I'll listen to  
22          her, she'll say she called; I'll listen to him, he'll say  
23          he didn't get it. I suppose there are at least some  
24          possible scenarios where both of them could be telling the  
25          truth, for some reason it got erased, or whatever. But I'm



1 not so sure that just leaving it on an answering machine is  
2 any kind of delivery of the notice.

3 MS. STERRETT: If that's the way he commonly accepts  
4 notices from tenants then it absolutely would be and we  
5 would be entitled to put on testimony to that effect.

6 THE COURT: Is that how you accept this kind of  
7 information?

8 MR. HIRSCHY: They usually call me and I'll tell them  
9 what they have to do in return for me to do anything.

10 THE COURT: Well, you know, why--

11 MR. HIRSCHY: I will say--

12 THE COURT: --would it be in his interest not to call  
13 her back? Why would it be in his interest--

14 MS. STERRETT: We don't-- I mean, we can't state  
15 affirmatively that he got the messages. You just said  
16 yourself that there may be reason to--

17 THE COURT: Well, you said he didn't.

18 MS. STERRETT: Okay. But she left several.

19 MS. HEIL: He did call me back.

20 THE COURT: But when he called you back what was the  
21 date he called you back?

22 MS. HEIL: I don't remember.

23 THE COURT: Was it the date he's talking about,  
24 thirtieth of March?

25 MS. STERRETT: About the twenty-eighth?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. HEIL: It was before that.

THE COURT: Did you ever contact her about this situation before March 30?

MR. HIRSCHY: No, I did not. March 28 or 29 is when she had called me and told me that she has no income. At that time is when I told her what she would have to do in order to get her rent adjusted.

THE COURT: You're saying she called you, you didn't call her to--

MR. HIRSCHY: She called me on the twenty-eighth or the twenty-ninth and I took the phone call that day.

THE COURT: You're saying before that you never--

MR. HIRSCHY: I never received--

THE COURT: --got notice on your answering machine?

MR. HIRSCHY: No.

THE COURT: Now, do you use an answering machine for this type of information to be conveyed?

MR. HIRSCHY: Ah, sometimes. I do have four properties. I'm in and out of the office all the time. I've got three other--two other employees. So they may have gotten it and who knows what happened. I don't know. But I do-- Like today I was out on the road all day so any messages I got today I've got no idea.

THE COURT: But if she was calling you a week or two before, I mean, wouldn't you have gotten that message--

1 MR. HIRSCHY: Oh definitely.

2 THE COURT: --in the normal course of business?

3 MR. HIRSCHY: At that time if they leave a message I  
4 will call them back and say, you know, "I can't do anything  
5 on your word, I have to have proof from your employer."

6 THE COURT: All right. Well, here's the first thing.  
7 You go ahead and call and verify whether this can be  
8 retroactively paid.

9 MS. STERRETT: Right.

10 THE COURT: 'cause if it can then we don't have a  
11 dispute. Um, if it can't be retroactively paid, um, then  
12 I suppose there's at least one question of fact, although  
13 I think it might be premised on a question of law. And  
14 that is if in fact you call and leave a message on a  
15 recording device in a business office for the administrator  
16 of this particular program is that in fact satisfactory  
17 notification--even though if he testifies under oath he  
18 didn't get it, um, is that gonna be some sort of mailbox  
19 rule or something like that.

20 I'm not sure what the answer is. I think that's about  
21 the only triable issue. The rest of this seems to me to be  
22 covered by the lease and, at least based on his testimony,  
23 there's pretty strong evidence, at least from the date on  
24 here, that what he did was send this form to the employer  
25 on March 30 because there is a date March 30, 1999. It was

1 filled out and returned and it looks to me like the date of  
2 the return is on the page one, which would be the cover  
3 page, of April 2. So I don't know what your employer is  
4 gonna say, but you might want to check with him.

5 MS. STERRETT: And that would certainly be another  
6 issue of fact if they dispute that it was sent that late.

7 THE COURT: Do you have a copy of this?

8 MS. STERRETT: I do not, no.

9 THE COURT: Okay. We're gonna make a copy for you--

10 MS. STERRETT: Okay.

11 THE COURT: --and you show it to the employer and see  
12 what proof they've got that--

13 MS. STERRETT: Okay.

14 THE COURT: --somehow they sent something earlier than  
15 this.

16 Um, now, at this particular point what kind of trial  
17 does she want?

18 MS. STERRETT: We would request a jury trial since  
19 there are a few issues of fact. I don't think it would be  
20 a very long jury trial.

21 THE COURT: Okay.

22 MS. STERRETT: I've prepared--

23 THE COURT: Does she have her \$40.00 with her?

24 MS. STERRETT: Well, I've prepared a request for  
25 waiver of fees. Her only income at the moment is \$75.00 a

1 week in child support. He's stated on the record as well  
2 that, I mean, he doesn't dispute that she doesn't--she's  
3 not working.

4 MR. HIRSCHY: However she is receiving income, she  
5 does pay rent then. To my knowledge she had no income. So  
6 then we can retroact that back to pay rent.

7 THE COURT: Now, what--

8 MS. STERRETT: Child support is received on the  
9 benefit of the child.

10 MR. HIRSCHY: It's still income within the household.  
11 I can get my manual for that. Child support is counted as  
12 income.

13 MS. STERRETT: That-- I would, you know, argue that  
14 that's not a part of what we're doing here today.

15 MR. HIRSCHY: Well, I--

16 MS. STERRETT: I mean, if he wants--

17 MR. HIRSCHY: --understand that.

18 MS. STERRETT: --to recertify her again.

19 MR. HIRSCHY: But still there's-- She told me that  
20 she has no income, so right there she just violated the  
21 lease.

22 MS. HEIL: Well, I report--

23 MR. HIRSCHY: No.

24 MS. HEIL: I reported that I've been receiving child  
25 support since July.

1 THE COURT: Then is she-- Does she submit something  
2 to you where she says she has no income?  
3 MS. HEIL: But I'm also--  
4 THE COURT: Has she submitted something to you where  
5 she says she has no income?  
6 MR. HIRSCHY: As far as termination of employment she  
7 called me and that's--  
8 THE COURT: Okay. But does-- Is what she says no  
9 income or what? I mean, you--  
10 MR. HIRSCHY: Oh, okay.  
11 THE COURT: --asked-- Does she fill out a form  
12 saying, "Hey, I don't have a job and I have no income"?  
13 MR. HIRSCHY: No, I do not.  
14 THE COURT: Okay. So what is her responsibility then  
15 when she says, "I don't have anymore income," or, "I'm not  
16 employed"?  
17 MR. HIRSCHY: Um-hmm.  
18 THE COURT: And she has child support coming in, which  
19 you say counts.  
20 MR. HIRSCHY: Um-hmm.  
21 THE COURT: How is she supposed to-- Is she supposed  
22 to tell you that?  
23 MR. HIRSCHY: As far as the employment?  
24 THE COURT: No.  
25 MR. HIRSCHY: The employment--

1 THE COURT: Is she supposed to tell you that she has  
2 child support and that that's part of the income for the  
3 family unit?

4 MR. HIRSCHY: According to her recertification as of  
5 August, '98 it shows no child support as well.

6 THE COURT: Do you have--

7 MR. HIRSCHY: I was unaware of her receiving child  
8 support.

9 THE COURT: Can I see that.

10 MS. STERRETT: Your Honor, my client states that she--  
11 he was aware that she was receiving child support.

12 THE COURT: Did she fill that out?

13 MR. HIRSCHY: No. This is what the computer generates  
14 and it lists of all the income that they have.

15 THE COURT: Where does that come from?

16 MR. HIRSCHY: Ah--

17 THE COURT: Where does that information come from?

18 MR. HIRSCHY: What I put into it. So they--

19 THE COURT: Does she--

20 MR. HIRSCHY: We've got a computer program.

21 (At 3:37 p.m., PX 3 marked for identification)

22 THE COURT: Does she fill out something? Can I see  
23 that please?

24 MR. HIRSCHY: Yeah.

25 THE COURT: Does she fill out something certifying

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

that--

MR. HIRSCHY: We have the checklist.

THE COURT: So she filled out something on which this is--on which she put stuff in the computer?

MR. HIRSCHY: Correct.

THE COURT: Can I see what she filled out.

MR. HIRSCHY: I will get that.

MS. STERRETT: My client was under the impression that it was balanced against her obligation to pay child support. She has two other children that are not residing with her. That is stated on her affidavit.

MR. HIRSCHY: This is a checklist, this is what I go by as far as employment.

THE COURT: Did she fill it out?

MR. HIRSCHY: Yes, she did.

THE COURT: And signed it?

MR. HIRSCHY: And signed it, dated it--

THE COURT: Can I see it please.

MR. HIRSCHY: --May 18, '98 and child support is not checked on there.

(At 3:38 p.m., PX 4 marked for identification)

MS. STERRETT: I have not seen this document at all.

THE COURT: "I receive child support or alimony," checked no.

Are you trying to terminate her lease?



1 MR. HIRSCHY: No, we're not. No. This is just a  
2 matter of non-payment of rent, effective, like I said,  
3 effective May she has no rent.

4 THE COURT: Now, can you terminate her lease for that  
5 statement that she does not receive child support?

6 MR. HIRSCHY: Yes, we can. However if she reports it  
7 and it gets settled then our option is no we wouldn't do it  
8 based on that.

9 THE COURT: You want to push him into terminating her?

10 MS. STERRETT: I'm sorry I was discussing this with my  
11 client, I didn't hear what was just stated.

12 THE COURT: Well, according to him-- Now, what  
13 provision in the lease allows to terminate her if she  
14 submits invalid information?

15 MS. STERRETT: Your Honor, we submit that this is not  
16 invalid information, this is from over a year ago and she  
17 was not receiving child support at that time. She has a  
18 current child support obligation as well.

19 THE COURT: When-- It said, "Child support Kent  
20 County Friend of the Court, one minor child." What is that  
21 child's name?

22 MS. HEIL: Brian.

23 THE COURT: What?

24 MS. HEIL: Brian.

25 MS. STERRETT: Full name.

1 MS. HEIL: Brian Scott Heil.  
2 THE COURT: How old is Brian?  
3 MS. HEIL: Four and a half.  
4 THE COURT: When did you start receiving child support  
5 for Brian?  
6 MS. HEIL: July, August.  
7 THE COURT: Of what year?  
8 MS. HEIL: '98.  
9 THE COURT: That's the first time you got child  
10 support?  
11 MS. HEIL: On a routine basis, yes.  
12 THE COURT: Did you receive the child-- Did you have  
13 a child support order for Brian before that?  
14 MS. HEIL: Yes, I did.  
15 THE COURT: Did you have a child support order for  
16 Brian at the time you said there was no child support?  
17 MS. HEIL: I had an order, yes.  
18 THE COURT: Had you not received any child support  
19 whatsoever at that time?  
20 MS. HEIL: Sporadic.  
21 THE COURT: But you received it?  
22 MS. HEIL: On occasion.  
23 MS. STERRETT: I think it's safe to say, Your Honor,  
24 that--  
25 THE COURT: It's not safe to say. That's a

1 misstatement.

2 Now, the problem I see here, you can push this to a  
3 jury trial. I think he has the right, he can terminate the  
4 tenancy on the basis that of misinformation, that you may  
5 be pushing him to do something he doesn't necessarily want  
6 to do. But I don't necessarily want to have a jury trial  
7 based on one month's rent. She has the right to do it.  
8 But there's a whole lot of things she's saying here that  
9 are questionable. Some of the stuff that he has, all the  
10 writing stuff, indicates that, you know, what she's saying  
11 isn't right.

12 MS. HEIL: He also put a--

13 MS. STERRETT: Shh, just a minute.

14 THE COURT: All I'm saying is as a practical matter,  
15 we'll set it for jury pick; you have a right to it. At  
16 this particular point if he wants to terminate it he can do  
17 so under the lease. There's no question that's a  
18 misstatement if she received some child support.

19 MS. STERRETT: If I could have a minute just to  
20 discuss this with her.

21 THE COURT: Okay. --Let me suggest this just as a  
22 possibility to think about.

23 First, if he can get the money for rent from these  
24 people then I'm sure both of you would be better off to do  
25 that.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. STERRETT: That would be fine.

THE COURT: If he gets the rent she stays, apparently he wants her to stay.

Second thing is if he doesn't, if he's stuck with the rent-- If she pays the rent back to you are you willing to cut her some slack and give her time to do that?

MR. HIRSCHY: Well, by all means, yes.

THE COURT: I mean, what kind of timeframe, if she decides, you know, I don't want to take a chance on pushing you into trying to terminate the tenancy based on this thing 'cause I don't think that information is correct no matter how you look at it.

But what is the amount you claim that she owes you for this rental period?

MR. HIRSCHY: Um, \$230.00, plus court costs.

MS. STERRETT: And, Your Honor--

THE COURT: Now, if we give you back your filing fee, which is \$32.00, you would have court costs of \$16.93, is that right?

MR. HIRSCHY: Correct.

THE COURT: Now, part of that's a late fee. Can you waive that?

MR. HIRSCHY: Possibly, yeah. Um--

THE COURT: So what would it be without the late fee?

MR. HIRSCHY: That would make it \$210.00, plus the

1           \$16.93.

2           THE COURT:   So \$226.93?   How long would you give her  
3           to pay it?

4           Well, let me ask you, ma'am, how--   If in fact you  
5           talk to your attorney and decide that you want to try to  
6           settle and pay that how long would it take you to pay  
7           \$226.93?

8           MS. HEIL:   A couple months probably.

9           THE COURT:   Can you pay it in two months or do you  
10          need longer than that?   I mean, for sure how long will it  
11          take you?

12          MS. HEIL:   Two months.

13          THE COURT:   All right.   Would you give her three  
14          months to pay it?   --It would be--   If it's \$226.00,  
15          divided by three, it would be about \$72.40 a month.

16          All right.   Why don't--   Here's where we are as I  
17          understand it.   He may decide that he's not--doesn't want  
18          her out anyway.   I mean, you know, maybe he wants to keep  
19          her regardless of this particular information.   But if you  
20          receive any child support and it says, "Do you receive  
21          child support?" you have to put yes.   If he's willing to  
22          waive that then if you want to have a jury trial we'll set  
23          it up because we're, you know, that's what we're supposed  
24          to do.

25          The second thing is, he may decide, "Gees, if they're

1 gonna screw me around and make me go through all these  
2 hoops then I might as well try to get her out and get  
3 somebody in I don't have so much trouble with," and at  
4 least make the claim on this thing that he wants to  
5 terminate your tenancy. Now, at this point he doesn't want  
6 to do that as I understand it. And he may not-- He may  
7 never want to do it. But it's a possibility that he may  
8 change his mind and go through the hoops if he's gotta do  
9 this anyway.

10 My suggestion is talk to your attorney, he can--at  
11 this point we're willing to voucher him back the filing  
12 fee, which is \$32.00. He's willing to knock off the late  
13 fee. Which brings it down to \$226.93. He's willing to  
14 accept \$72.40 a month until you're paid up to date.

15 Now, that's on the premise that the agency that he  
16 deals with will not let you retroactively go through this.  
17 Because if they will I'm sure it's in his best interests to  
18 say, "Hey, then recertify, I'll get 'em to pay that back  
19 month," and then everybody's happy. But if that doesn't  
20 happen, if they say, "No, we're not gonna do it," then you  
21 might want to think about settling this way rather than  
22 have the jury trial and taking the chance that he may  
23 decide at some time to try to terminate the tenancy based  
24 on the information you have there, which it doesn't look to  
25 me like it's correct.

1 MS. STERRETT: Your Honor, would it be appropriate for  
2 this Court to schedule us either an adjournment of this  
3 matter or perhaps a pretrial within the next week or so so  
4 we can see what information we do have--

5 THE COURT: Yeah.

6 MS. STERRETT: --before we make any decisions.

7 THE COURT: What I'm suggesting is at this point you  
8 go back and go ahead and give her the number where she can  
9 call and either verify they will retroactively pay.

10 At that point you let us know within a week what you  
11 want to do; whether you guys have settled it or whether you  
12 want it set for a jury.

13 MS. STERRETT: Okay.

14 THE COURT: If you want it set for a trial we'll go  
15 about and pick a jury on this particular--these two  
16 questions of fact. And then see what they come up with.  
17 But for this amount of money, and with the fact that he has  
18 at least some bit of a hammer here, and the fact that he  
19 wants you to stay doesn't really want you out anyway.  
20 Maybe you want to decide to go ahead and pay it or  
21 whatever.

22 Now, as I understand what he's telling me, do you  
23 understand you're supposed to be recertified and stuff.

24 MS. HEIL: Yes, I do.

25 THE COURT: Now, if you call him and don't get a call

1 back; go there, send him a letter, do something so that,  
2 you know, you know that you have sent the letter, somebody  
3 signed for it, and come in there and you won't have any  
4 kind of problems. Maybe you don't anyway.

5 But what he's saying is, "Heck, I never got any  
6 message on the record." And that's one of the-- It's hard  
7 for me to tell one way or the other. If you have, you  
8 know, return receipt showing you sent him notice and  
9 somebody in the office got it, that's good enough. Then  
10 they don't have the problem of me trying to figure out who  
11 got what.

12 But what we'll do is adjourn this for a week until  
13 we've heard from you.

14 MS. STERRETT: Okay.

15 THE COURT: You guys try to figure it out, and you'll  
16 call her-- Does he have your phone number?

17 MS. STERRETT: He's got my phone number, yes.

18 THE COURT: Okay. Call her today if you can; if not,  
19 tomorrow morning at the latest so that she can check and  
20 see whether there's a possibility of getting them to  
21 retroactively pay this off.

22 MS. STERRETT: And we do need copies of I believe two  
23 of the exhibits. I don't have this one.

24 THE COURT: Whatever you need we'll make copies of--

25 MS. STERRETT: Okay.



1 THE COURT: Let me give you guys back what you've  
2 given me. Now, this is the fax, you want a copy of that.  
3 MS. STERRETT: That one and this one is what I need  
4 copies.  
5 THE COURT: Okay. And then--  
6 MS. STERRETT: I have the other two.  
7 THE COURT: Are these yours or these his?  
8 MS. STERRETT: These are mine.  
9 THE COURT: Okay. Is this yours also or is that--  
10 MS. STERRETT: No, that is theirs.  
11 THE COURT: Why don't you give that to him and we'll  
12 make copies of these two. And then we'll give you back--  
13 Let me give you your lease, if I haven't already.  
14 MR. HIRSCHY: I've got that.  
15 THE COURT: You've got the lease. We'll make copies  
16 and give you back these other two that we had marked as  
17 exhibits. You call her by tomorrow morning at the latest  
18 and then she'll check it out. You guys get together, try  
19 to work it out. If you don't, call us, tell us and we'll  
20 set it for a jury trial.  
21 MS. STERRETT: All right. So the jury trial is  
22 preserved then at this point?  
23 THE COURT: Yep.  
24 MS. STERRETT: For a week.  
25 THE COURT: On these two issues, yes.

1 MS. STERRETT: And I would like to clarify that I have  
2 court tomorrow morning so he will be leaving a message on  
3 my voice mail.

4 THE COURT: Okay. But I imagine you have a secretary  
5 there that's gonna take it for you probably.

6 MS. STERRETT: Actually, it usually goes into voice  
7 mail so--

8 THE COURT: All right. Okay. Just make sure she gets  
9 it so she can check it out, okay?

10 MR. HIRSCHY: Yeah. I can call her as soon as I get  
11 back.

12 THE COURT: All right. Thank you very much.

13 MR. HIRSCHY: Thank you.

14 MS. STERRETT: Thank you.

15 (At 3:49 p.m., proceeding concluded)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MICHIGAN     )  
                                  )  
COUNTY OF KENT        )

I certify that this transcript, consisting of 38 pages, is  
a complete, true, and correct transcript of the proceedings and  
testimony taken in this case on May 6, 1999.

May 18, 1999                                 Sheila Van Hoose  
  Sheila R. VanHoose, CER 5162  
  105 Maple Street  
  Rockford, Michigan 49341